CHAPTER 9
Executive Department

ARTICLE 1
Executive Reorganization

9-1-1. Short title.

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

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

ANNOTATIONS

Emergency clauses. — Laws 1977, ch. 248, § 14 contained an emergency clause and was approved April 7, 1977.

Cross references. — For constitutional provisions relating to executive department, *see* N.M. Const., art. V, §§ 1 to 16.

For elected officials generally, *see* Chapter 8 NMSA 1978.

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

For the Sunset Act, *see* 12-9-11 to 12-9-21 NMSA 1978.

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

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

9-1-2. Purpose of act.

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

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

ANNOTATIONS

Emergency clauses. — Laws 1977, ch. 248, § 14 contained an emergency clause and was approved April 7, 1977.

Compiler's notes. — The reorganization laws enacted by the first regular session of the thirty-third legislature are Laws 1977, chs. 245 to 258.

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

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

B. The cabinet shall:

(1) advise the governor on problems of state government;

(2) establish liaison and provide communication between the executive departments and state elected officials;

(3) investigate problems of public policy;

(4) study government performance and recommend methods of interagency cooperation;

(5) review policy problems and recommend solutions;

(6) strive to minimize and eliminate overlapping jurisdictions and conflicts within the executive branch; and

(7) assist the governor in defining policies and programs to make the government responsive to the needs of the people.

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

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

ANNOTATIONS

Emergency clauses. — Laws 1977, ch. 248, § 14 contained an emergency clause and was approved April 7, 1977.

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 as 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, the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978]; and

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

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

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

ANNOTATIONS

Emergency clauses. — Laws 1977, ch. 248, § 14 contained an emergency clause and was approved April 7, 1977.

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

Sections not in conflict with Personnel Act in defining exempt positions. — In defining exempt positions only for the secretary and division heads of the health and environment department (now department of health and department of environment), this section and 9-7-6B(9) NMSA 1978 are not in conflict with the Personnel Act [Chapter 10, Article 9 NMSA 1978] 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 the secretary's duty to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged.

B. To perform the secretary's 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 Executive Reorganization 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 the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

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

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

(5) 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 the secretary 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 residents of the state;

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

(8) prepare an annual budget of the department;

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

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

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

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

(10) implement, as much as legally permissible, the strategic plan developed by the sustainable economy task force as provided in Section 9-15-59 NMSA 1978;

(11) develop and implement a departmental plan to provide meaningful access to state programs for individuals with limited English proficiency that includes:

(a) an annual public assessment, submitted to the governor, that details the need for departmental services to improve access for individuals with limited English proficiency;

(b) the department's plan to meet the needs identified in the assessment, including interpretation and translation services and bilingual staffing;

(c) the cost, including competitive salary structures for employees with multilingual proficiencies, to implement the departmental plan to provide meaningful language access to state programs; and

(d) submission of an annual report to the governor and the legislative finance committee regarding the implementation of the department's language access plan;

(12) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978]. Persons appointed to these positions shall serve at the pleasure of the secretary;

(13) 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

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

C. The secretary may apply for and receive, with the governor's approval, in the name of the department any public or private funds, including 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 procedural rules as may be necessary to carry out the duties of the department and its divisions. No rule 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 rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, 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 rule or proposed amendment or repeal of an existing rule 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 shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

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

History: 1953 Comp., § 4-29B-5, enacted by Laws 1977, ch. 248, § 5; 2021, ch. 42, § 3; 2022, ch. 18, § 1.

ANNOTATIONS

Cross references. — For state budgets, *see* 6-3-1 to 6-3-25 NMSA 1978.

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

The 2022 amendment, effective July 1, 2022, required all state departments to provide meaningful access to state programs for individuals with limited proficiency in English; and in Subsection B, added a new Paragraph B(11) and redesignated former Paragraphs B(11) through B(13) as Paragraphs B(12) through B(14), respectively.

The 2021 amendment, effective July 1, 2021, required that department secretaries of state agencies comply with the strategic plan developed by the sustainable economy task force, and made technical, nonsubstantive amendments; and in Subsection B, Paragraph B(1), after "provided in", deleted "this" and added "the Executive Reorganization Act", and added a new Paragraph B(10) and redesignated former Paragraphs B(10) through B(12) as Paragraphs B(11) through B(13), respectively.

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

9-1-6. Adjunct agencies.

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

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

ANNOTATIONS

Emergency clauses. — Laws 1977, ch. 248, § 14 contained an emergency clause and was approved April 7, 1977.

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 [Chapter 10, Article 9 NMSA 1978].

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

ANNOTATIONS

Emergency clauses. — Laws 1977, ch. 248, § 14 contained an emergency clause and was approved April 7, 1977.

Cross references. — For state budgets, *see* 6-3-1 to 6-3-25 NMSA 1978.

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

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

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

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

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

ANNOTATIONS

Emergency clauses. — Laws 1977, ch. 248, § 14 contained an emergency clause and was approved April 7, 1977.

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

9-1-9. Creation of advisory committees; who may create; filing; applications; composition; life span; title; quorom [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 shall, upon the effective date of the Executive Reorganization Act, file a record of each advisory committee within the department not abolished. Upon the filing of such a record, the provisions of this section shall apply to each such advisory committee.

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

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

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

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

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

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

ANNOTATIONS

Compiler's notes. — The effective date of Laws 1977, ch. 248, the Executive Reorganization Act, was April 7, 1977.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

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

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. The district courts may, on motion or supplemental petition filed at any time within twelve months after the reorganization plan takes effect, showing a necessity for a survival of the unit [suit], action or other proceeding to obtain a settlement of the questions involved, allow the same to be maintained by or against the successor of such head of agency or officer of the state under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the governor shall designate.

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

ANNOTATIONS

Emergency clauses. — Laws 1977, ch. 248, § 14 contained an emergency clause and was approved April 7, 1977.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

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

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.

ANNOTATIONS

Effective dates. — Laws 1979, ch. 205 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective April 2, 1979, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 1979, ch. 205 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective April 2, 1979, 90 days after the adjournment of the legislature.

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

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

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

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

History: Laws 1983, ch. 297, § 30.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 297, § 34 made Laws 1983, ch. 297, § 30 effective July 1, 1983.

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

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

Current application. — An executive order, issued pursuant to this section, under which the New Mexico real estate commission was placed under the supervision of the New Mexico regulation and licensing department has not yet been replaced or repealed

and continues today as does this section and is therefore the current law. *N.M. Regulation & Licensing Dep't v. Lujan*, 1999-NMCA-059, 127 N.M. 233, 979 P.2d 744.

Statutes and rules of individual licensing boards not superseded. — This section and the Regulation and Licensing Department Act [9-16-1 to 9-16-13 NMSA 1978] do not supersede the specific powers and duties that the legislature has given to the board of veterinary examiners pursuant to the Veterinary Practice Act. 1987 Op. Att'y Gen. No. 87-58.

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

ARTICLE 2
Commerce and Industry Department (Repealed.)

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

ANNOTATIONS

Repeals. — Laws 1983, ch. 297, § 33, repealed 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 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.

ARTICLE 2A
Children, Youth and Families Department

9-2A-1. Short title.

Chapter 9, Article 2A NMSA 1978 may be cited as the "Children, Youth and Families Department Act".

History: Laws 1992, ch. 57, § 1; 2007, ch. 65, § 1.

ANNOTATIONS

Cross references. — For duties relating to the Safe Haven for Infants Act, *see* 24-22-1 NMSA 1978 et seq.

The 2007 amendment, effective June 15, 2007, changed the statutory reference to the act.

Sovereign immunity barred USERRA claim against the state. — Article I, Section 8, Clause 11 of the United States Constitution, known as the war powers clause, does not authorize congress to subject the state to private suits for damages in state courts pursuant to the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301 to 4335, absent the state's consent and the legislature has not waived the state's constitutional immunity to private USERRA suits for damages. *Ramirez v. State ex rel. CYFD*, 2014-NMCA-057, *rev'd by* 2016-NMSC-016.

Where plaintiff, who was a member of the New Mexico national guard, was employed by the department; plaintiff was deployed to Iraq; upon plaintiff's return from active duty, plaintiff was reemployed by the department in plaintiff's previous position; plaintiff's working relations with plaintiff's supervisors deteriorated and plaintiff's employment was terminated; and filed a suit under Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301 to 4335, alleging that the department discriminated against plaintiff and terminated plaintiff because of plaintiff's military service, plaintiff's claim was barred by state sovereign immunity. *Ramirez v. State ex rel. CYFD*, 2014-NMCA-057, *rev'd by* 2016-NMSC-016.

9-2A-2. Purpose.

The purpose of the Children, Youth and Families Department Act is to establish a department of state government that shall:

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

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

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

D. provide leadership to other agencies that serve children, youth and families to ensure a coordinated and integrated system of care and services for children, youth and families.

History: Laws 1992, ch. 57, § 2; 2003, ch. 338, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, added Subsection D.

9-2A-3. Definitions.

As used in the Children, Youth and Families Department Act:

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

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

History: Laws 1992, ch. 57, § 3.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 57, § 58 made Laws 1992, ch. 57, § 3 effective July 1, 1992.

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

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

(1) the protective services division;

(2) the juvenile justice division;

(3) the prevention and intervention division;

(4) the financial services division;

(5) the employee support division; and

(6) the information technology division.

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

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

History: Laws 1992, ch. 57, § 4; 2003, ch. 338, § 2; 2005, ch. 110, § 1.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, created the information technology division within the children, youth and families department in Subsection A(6).

The 2003 amendment, effective June 20, 2003, substituted "five divisions" for "six divisions" and substituted the present Subsections A(1) through A(5) for the former Subsections A(1) through A(7) that listed the following divisions: administrative services, preventive services, risk reduction services, moderate intervention services, community residential services, juvenile justice services (until July 1, 1993) and institutional care (beginning July 1, 1993).

9-2A-5. Repealed.

History: Laws 1992, ch. 57, § 5; 2009, ch. 239, § 1; repealed by Laws 2009, ch. 239, § 70.

ANNOTATIONS

Repeals. — Laws 2009, ch. 239, § 70 repealed 9-2A-5 NMSA 1978, as enacted by Laws 1992, ch. 57, § 5, relating to juvenile parole board as administratively attached agency, effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

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

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

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

History: Laws 1992, ch. 57, § 6.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 57, § 58 made Laws 1992, ch. 57, § 6 effective July 1, 1992.

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

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

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

(1) except as otherwise provided in the Children, Youth and Families Department Act, exercise general supervisory and appointing power over all department employees, subject to applicable personnel laws and regulations;

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

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

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

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

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

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

(8) prepare an annual budget for the department;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNOTATIONS

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

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

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

A. develop priorities for department services and resources based on state policy and national best-practice standards and local considerations and priorities;

B. strengthen collaboration and coordination in state and local services for children, youth and families by integrating critical functions as appropriate, including service delivery, and contracting for services across divisions and related agencies;

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

D. develop standards of service within the department that focus on prevention, monitoring and outcomes;

E. analyze policies of other departments that affect children, youth and families to encourage common contracting procedures, common service definitions and a uniform system of access;

F. enact regulations to control disposition and placement of children under the Children's Code [Chapter 32A NMSA 1978], including regulations to limit or prohibit the out-of-state placement of children, including those who have developmental disabilities

or emotional, neurobiological or behavioral disorders, when in-state alternatives are available;

G. develop reimbursement criteria for licensed child care centers and licensed home providers establishing that accreditation by a department-approved national accrediting body is sufficient qualification for the child care center or home provider to receive the highest reimbursement rate paid by the department;

H. assume and implement responsibility for children's mental health and substance abuse services in the state, coordinating with the human services department [health care authority department] and the department of health;

I. assume and implement the lead responsibility among all departments for domestic violence services;

J. implement prevention and early intervention as a departmental focus;

K. conduct biennial assessments of service gaps and needs and establish outcome measurements to address those service gaps and needs, including recommendations from the governor's children's cabinet and the children, youth and families advisory committee;

L. ensure that behavioral health services provided, including mental health and substance abuse services for children, adolescents and their families, shall be in compliance with requirements of Section 9-7-6.4 NMSA 1978; and

M. fingerprint and conduct nationwide criminal history record searches on all department employees, staff members and volunteers whose jobs involve direct contact with department clients, including prospective employees and employees who are promoted, transferred or hired into new positions, and the superiors of all department employees, staff members and volunteers who have direct unsupervised contact with department clients.

History: Laws 1992, ch. 57, § 8; 1993, ch. 77, § 2; 2001, ch. 129, § 1; 2003, ch. 338, § 3; 2004, ch. 46, § 3; 2005, ch. 271, § 1; 2011, ch. 163, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

The 2011 amendment, effective June 17, 2011, required the department to conduct fingerprint and criminal history record searches on staff members and volunteers who

have direct contact with clients and on supervisors who have direct unsupervised contact with clients.

The 2005 amendment, effective June 17, 2005, added Subsection M to provide that the department shall fingerprint and conduct nationwide criminal history records searches on all department employees whose jobs involve contracts with department clients.

The 2004 amendment, effective May 19, 2004, deleted from Subsection H the department from being the lead department for substance abuse services and added Subsection L.

The 2003 amendment, effective June 20, 2003, rewrote the section.

The 2001 amendment, effective June 15, 2001, inserted Subsection J.

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

9-2A-8.1. Criminal history record investigations; procedure; confidentiality; violation; penalty.

A. The department shall submit fingerprints for each individual required to be fingerprinted pursuant to the Children, Youth and Families Department Act to the department of public safety and the federal bureau of investigation.

B. Criminal histories obtained are confidential and shall be used only for the purpose of determining the suitability of an employee or volunteer or prospective employee or volunteer for employment or service by the department; except that criminal histories may be released or disclosed to another agency or person only upon court order or with the written consent of the person who is the subject of the criminal history record.

C. A person who releases or discloses criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and if convicted shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2005, ch. 271, § 2; 2007, ch. 65, § 3.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, provided that criminal histories obtained to determine the suitability of a volunteer are confidential.

9-2A-8.2. Prohibition on employment for individuals with substantiated allegations of child abuse or neglect; prohibition on convicted felons; disciplinary action; confidentiality of abuse and neglect records.

A. No employee, staff member or volunteer at the department, including prospective employees, having direct unsupervised contact with department clients, nor the superiors of any such employee, staff member or volunteer, shall have been the subject of a substantiated allegation of child abuse or neglect.

B. No employee, staff member or volunteer at the department who has direct unsupervised contact with department clients, or the superiors of an employee, staff member or volunteer at the department who has direct unsupervised contact with department clients, shall have been convicted of a felony offense that is directly related to the job duties of the employee by a court of this state, any other state or the United States.

C. Any employee or staff member subject to the Personnel Act [Chapter 10, Article 9 NMSA 1978] who has been the subject of a substantiated allegation of abuse or neglect as investigated and determined by the department may be subject to increased supervision or disciplinary action under the Personnel Act. Upon appeal of a disciplinary action to the personnel board pursuant to this section, the personnel board shall defer to the record of the administrative hearing affirming a substantiated allegation of abuse or neglect, if one exists, in determining whether the action taken by the agency was with just cause.

D. An employee or a staff member of the department subject to dismissal under this section shall have no right to progressive discipline as a condition precedent to discipline under this section.

E. In any appeal of an employee or staff member to the personnel board as provided by the Personnel Act, records that are otherwise confidential pursuant to the Abuse and Neglect Act [Chapter 32A, Article 4 NMSA 1978] shall be discoverable by the parties and admissible as to any relevant fact; provided that any identifying information related to the reporting party, any other party providing information and information the department finds would be likely to endanger the life or safety of any person providing information to the department may be redacted.

History: Laws 2011, ch. 163, § 1.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 163 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

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

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

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

History: Laws 1992, ch. 57, § 9.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 57, § 58 made Laws 1992, ch. 57, § 9 effective July 1, 1992.

9-2A-10. Division directors.

The secretary may appoint, with the approval of the governor, "directors" of such divisions as are established within the department. Directors are exempt from the Personnel Act [Chapter 10, Article 9 NMSA 1978].

History: Laws 1992, ch. 57, § 10.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 57, § 58 made Laws 1992, ch. 57, § 10 effective July 1, 1992.

9-2A-11. Bureaus; chiefs.

The secretary may establish within each division such "bureaus" as he deems necessary to carry out the provisions of the Children, Youth and Families Department Act. He shall appoint a "chief" to be the administrative head of any such bureau. The chief and all subsidiary employees of the department shall be covered by the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978].

History: Laws 1992, ch. 57, § 11.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 57, § 58 made Laws 1992, ch. 57, § 11 effective July 1, 1992.

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

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

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

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

History: Laws 1992, ch. 57, § 12; 2003, ch. 338, § 4.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, added "and at least one member shall be on the governor's youth council" to the end of Subsection A.

9-2A-13. Repealed.

History: Laws 1992, ch. 57, § 13; 2003, ch. 338, § 5; repealed by Laws 2019, ch. 48, § 37.

ANNOTATIONS

Repeals. — Laws 2019, ch. 48, § 37 repealed 9-2A-13 NMSA 1978, as enacted by Laws 1992, ch. 57, § 13, relating to interagency coordinating group, effective July 1, 2020. For provisions of former section, *see* the 2019 NMSA 1978 on *NMOneSource.com*.

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

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

History: Laws 1992, ch. 57, § 14.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 57, § 58 made Laws 1992, ch. 57, § 14 effective July 1, 1992.

Cross references. — For the federal Juvenile Justice and Delinquency Prevention Act of 1974, *see* 42 U.S.C. § 5601 et seq.

9-2A-14.1. Juvenile continuum grant fund; created; purpose; administration; grant applications.

A. The "juvenile continuum grant fund" is created as a nonreverting fund in the state treasury. The fund shall be administered by the children, youth and families department and shall consist of appropriations, gifts, grants, donations and bequests made to the fund.

B. Money in the juvenile continuum grant fund is subject to appropriation by the legislature to the children, youth and families department for awarding grants to juvenile justice continuums for the provision of cost-effective services and temporary, nonsecure alternatives to detention for juveniles arrested or referred to juvenile probation and parole or at a risk of such referral.

C. A local or tribal government may apply for a grant from the juvenile continuum grant fund for a juvenile justice continuum within its jurisdiction. The amount of the grant application shall not exceed sixty percent of the annual cost of the continuum. A local match of forty percent may consist of money, land, equipment or in-kind services.

D. The children, youth and families department shall adopt rules on qualifications for grants and specify the format, procedure and deadlines for grant applications. The juvenile justice advisory committee shall review all grant applications and submit those applications recommended for final approval to the secretary of children, youth and families.

E. Disbursements from the juvenile continuum grant fund shall be made upon vouchers issued and signed by the secretary of children, youth and families or the secretary's designee upon warrants drawn by the secretary of finance and administration.

F. As used in this section, a "juvenile justice continuum" is a system of services and sanctions for juveniles arrested or referred to juvenile probation and parole or at risk of such referral and consists of a formal partnership among one or more units of local or tribal governments, the children's court, the district attorney, the public defender, local law enforcement agencies, the public schools and other entities such as private nonprofit organizations, the business community and religious organizations. A juvenile justice continuum shall be established through a memorandum of understanding and a continuum board.

History: Laws 2007, ch. 351, § 1.

ANNOTATIONS

Compiler's notes. — Laws 2007, ch. 351, § 2, transferred funds in the regional juvenile services grant fund to the juvenile continuum grant fund.

Effective dates. — Laws 2007, ch. 351, § 4 made Laws 2007, ch. 351, § 1 effective July 1, 2007.

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

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

History: Laws 1992, ch. 57, § 15.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 57, § 58 made Laws 1992, ch. 57, § 15 effective July 1, 1992.

Cross references. — For the federal Juvenile Justice and Delinquency Prevention Act of 1974, *see* 42 U.S.C. § 5601 et seq.

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

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

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

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

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

(4) in conjunction with the department, receive and review annual reports from adult jails and lockups regarding compliance with federal requirements that apply when a juvenile is temporarily held in an adult jail or lockup. The juvenile justice advisory committee and the department shall determine the format of the annual reports;

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

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

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

History: Laws 1992, ch. 57, § 16; 2009, ch. 239, § 2.

ANNOTATIONS

Cross references. — For the federal Juvenile Justice and Delinquency Prevention Act of 1974, *see* 42 U.S.C. § 5601 et seq.

The 2009 amendment, effective July 1, 2009, added Subsection A(4).

Applicability. — Laws 2009, ch. 239, § 71, provided that the provisions of this act apply to all children who, on July 1, 2009, are on release or are otherwise eligible to be placed on release as if the Juvenile Public Safety Advisory Board Act had been in effect at the time they were placed on release or became eligible to be released.

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

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

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

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

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

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

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

History: Laws 1993, ch. 120, § 1.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 120, § 2 made Laws 1993, ch. 120, § 1 effective July 1, 1993.

Juvenile correctional officer is a peace officer for purposes of the battery on a peace officer statute, despite the fact that JCOs are no longer under the control of the New Mexico corrections department. *State v. Gutierrez*, 1993-NMCA-058,115 N.M. 551, 854 P.2d 878, cert. denied, 115 N.M. 545, 854 P.2d 872.

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

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

A. be citizens of the United States;

B. be eighteen years of age or older;

C. possess a high school education or its equivalent;

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

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

History: Laws 1997, ch. 110, § 1.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 110, § 2 made Laws 1997, ch. 110, § 1 effective July 1, 1997.

9-2A-19. Short title.

Sections 9-2A-19 through 9-2A-22 NMSA 1978 may be cited as the "Youth Alliance Act".

History: Laws 2003, ch. 324, § 1; 2005, ch. 66, § 1.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, cited the statutory reference to the act and changed the name of the act from the Youth Council Act to the Youth Alliance Act.

9-2A-20. Purpose.

The purpose of the Youth Alliance Act [9-2A-19 to 9-2A-22 NMSA 1978] is to encourage young people throughout New Mexico to consider and discuss the opportunities, issues and challenges they face and to identify community, family and collaborative assets as possible solutions for presentation to the governor, lieutenant governor and legislature.

History: Laws 2003, ch. 324, § 2; 2005, ch. 66, § 2.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, changed the purpose of the act to encourage young people to consider and discuss the opportunities, issues and challenges they face and to identify community, family and collaborative assets as possible solutions.

9-2A-21. Youth alliance created; organization; functions; definition.

A. The "youth alliance" is created and is administratively attached to the children, youth and families department.

B. The alliance shall consist of youth, aged fourteen to twenty-four, from each New Mexico legislative district to be recruited through an open process and selected by a panel of other youth alliance members, legislators, government officials and representatives of community-based organizations using clear criteria developed by the department to ensure ethnic and economic diversity. Members shall serve two-year terms.

C. The alliance shall meet at least four times a year for the purpose of discussing, from a youth perspective, the assets that exist in communities and schools and the gaps that are present in these systems and to recommend opportunities for problem-solving and collaboration to the governor, lieutenant governor and legislature.

D. The alliance shall issue an annual report that summarizes the activities and findings of the alliance. The report shall be submitted to the legislature and the executive no later than November 15 of each year.

E. Subject to sufficient appropriations, the alliance members shall engage a diverse group of local peers and solicit their input and launch local projects.

F. As used in the Youth Alliance Act [9-2A-19 to 9-2A-22 NMSA 1978], "alliance" means the youth alliance.

History: Laws 2003, ch. 324, § 3; 2005, ch. 66, § 3.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, provided that the youth alliance is administratively attached to the children, youth and families department; that members of the alliance shall serve for two years, be fourteen to twenty four years of age, and be recruited through an open process selected by a panel of alliance members, public officials and representatives of community-based organizations using criteria developed by the department; that the alliance shall meet to discuss the assets of communities and schools and the gaps in the opportunities and recommend opportunities for problem-solving and collaboration and that alliance members shall engage a diverse group of local peers and solicit their input and launch local projects.

9-2A-22. Youth alliance coordinator; position created; duties.

A. The position of "youth alliance coordinator" is created in the office of the secretary of children, youth and families to organize, administer and coordinate youth alliance activities.

B. The coordinator shall:

(1) oversee the recruitment and selection of alliance members;

(2) organize alliance meetings, at least four of which shall include the lieutenant governor and the children's cabinet and at least two of which shall include the governor;

(3) assist the alliance in preparing an annual report on its activities and findings; and

(4) act as a liaison between the alliance and the children's cabinet, the legislature and other government officials to ensure their involvement in activities related to children and youth.

History: Laws 2003, ch. 324, § 4; 2005, ch. 66, § 4.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, created the youth alliance coordinator and provided that the coordinator shall oversee the recruitment and selection of alliance members; organize alliance meetings; act as liaison between the alliance and the children’s cabinet, the legislature and public officials.

9-2A-23. Volunteers and staff at juvenile facilities.

Fingerprinting and a background check shall be required for a volunteer or staff member at a juvenile justice facility who has direct unsupervised contact with residents.

History: Laws 2007, ch. 65, § 2.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

9-2A-24. New Mexico domestic violence leadership commission; membership; duties.

A. The "New Mexico domestic violence leadership commission" is created and is administratively attached to the children, youth and families department.

B. The New Mexico domestic violence leadership commission shall consist of twenty-six members appointed by the governor, unless otherwise specified, including:

(1) a representative from the office of the governor;

(2) the attorney general or the attorney general's designee;

(3) a state senator appointed by the senate president pro tempore;

(4) a state representative appointed by the speaker of the house of representatives;

(5) a representative from the department of public safety;

(6) the secretary of children, youth and families or the secretary's designee;

(7) a representative from the judiciary;

(8) the president of the New Mexico district attorney's association or the president's designee;

(9) the chief public defender or the chief public defender's designee;

(10) a representative from the corrections department;

(11) a representative from a law enforcement agency;

(12) a representative from New Mexico legal aid;

(13) a representative from the department of health;

(14) a representative from the New Mexico coalition against domestic violence or an equivalent organization;

(15) a representative from the southwest women's law center or an equivalent organization;

(16) a representative from the coalition to stop violence against native women or an equivalent organization;

(17) a representative from the crime victims reparation commission;

(18) the director of the New Mexico interpersonal violence data central repository;

(19) a representative from the New Mexico intimate partner violence death review team;

(20) a representative from the aging and long-term services department;

(21) a community representative;

(22) two rural domestic violence service providers;

(23) a domestic violence survivor nominated by the New Mexico coalition against domestic violence;

(24) a representative from a children's advocacy organization; and

(25) a representative from a gay and lesbian organization.

C. The appointed members of the New Mexico domestic violence leadership commission shall serve at the pleasure of the governor, and the members' appointments shall be reviewed at the commencement of each gubernatorial term. The governor shall designate one member as the chair, and the position of the chair shall be limited by a term of two years.

D. The New Mexico domestic violence leadership commission shall meet, pursuant to the Open Meetings Act [Chapter 10, Article 15 NMSA 1978], at the call of the chair at least six times annually. For the purposes of conducting business, a majority of the members of the commission constitutes a quorum.

E. Members of the New Mexico domestic violence leadership commission 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].

F. The New Mexico domestic violence leadership commission shall:

(1) identify domestic violence services that are lacking or in need of improvement and provide recommendations to the secretary of children, youth and families and the governor to enhance the quality and efficiency of services statewide;

(2) develop strategies for addressing issues of domestic violence and raising public awareness;

(3) study possible inequities in the treatment and disposition of males involved in domestic violence;

(4) review laws, regulations and policies related to domestic violence to assess their effectiveness and recommend changes; and

(5) report annually before October 1 to an appropriate legislative interim committee and the governor on domestic violence policy issues.

History: Laws 2010, ch. 86, § 1.

ANNOTATIONS

Effective dates. — Laws 2010, ch. 86 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

ARTICLE 3
Corrections Department

9-3-1. Short title.

Chapter 9, Article 3 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; 2007, ch. 9, § 1; 2007, ch. 123, § 1.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, added the NMSA 1978 statutory reference to the act.

Laws 2007, ch. 9, § 1 and Laws 2007, ch. 123, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 123, § 1. *See* 12-1-8 NMSA 1978.

9-3-2. Purpose.

The purpose of the Corrections Department Act 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, six divisions as follows:

A. the adult institutions division;

B. the adult probation and parole division;

C. the training academy division;

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

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

F. the information technology division.

History: 1978 Comp., § 9-3-3, enacted by Laws 1977, ch. 257, § 3; 1979, ch. 202, § 2; 1980, ch. 150, § 3; 1981, ch. 73, § 3; 1981, ch. 127, § 16; 1988, ch. 101, § 17; 1991, ch. 219, § 1; 2005, ch. 110, § 2.

ANNOTATIONS

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

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

For law enforcement generally, *see* Chapter 29 NMSA 1978.

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

For correctional institutions generally, *see* Chapter 33 NMSA 1978.

For powers and duties of the secretary of corrections, *see* 33-1-6 NMSA 1978.

Compiler's notes. — 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. Chapter 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.

The 2005 amendment, effective June 17, 2005, created the information technology division within the corrections department in Subsection F.

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

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

9-3-3.1. Establishing a demonstration, prison-based drug rehabilitation program.

A. The corrections department shall establish a demonstration, prison-based drug rehabilitation program for inmates.

B. The department is authorized to collaborate with a private organization that has expertise in establishing a prison-based drug rehabilitation program that addresses:

(1) drug rehabilitation;

(2) education;

(3) self-respect; and

(4) life skills.

History: Laws 2003, ch. 237, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 237, § 2 made Laws 2003, ch. 237, § 1 effective July 1, 2003.

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

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

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

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

ANNOTATIONS

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

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

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

A. The secretary of corrections is responsible to the governor for the operation of the corrections 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 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, 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 [Chapter 10, Article 9 NMSA 1978]. 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 the 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 the bonds.

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

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

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

F. Behavioral health services, including mental health and substance abuse services, provided by the department for persons under the department's supervision shall be in compliance with the requirements of Section 9-7-6.4 NMSA 1978.

History: 1978 Comp., § 9-3-5, enacted by Laws 1977, ch. 257, § 6; 1979, ch. 202, § 3; 1980, ch. 150, § 5; 1981, ch. 73, § 5; 2004, ch. 46, § 4.

ANNOTATIONS

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

For state budgets, *see* 6-3-1 to 6-3-25 NMSA 1978.

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

The 2004 amendment, effective May 19, 2004, added Subsection F.

No disparate treatment of employees in application DWI policy. — Where the employer adopted a DWI policy which required employees to self-report DWI offenses, required dismissal for a second DWI offense, and provided that discipline for DWI did not depend on conviction; plaintiff was arrested twice for suspicion of aggravated DWI after the policy became effective and self-reported the arrests; the criminal charges for both arrests were ultimately dismissed without a finding of guilt or innocence; plaintiff was dismissed after the second arrest for DWI; plaintiff claimed that the employer treated plaintiff differently than other employees; one employee had two prior DWI arrests, but only one arrest after the policy became effective; a second employee was rumored to have three or four DWIs, but never reported the DWIs and the employer had no record of the offenses; with one exception, plaintiff was treated the same as other employees who, after the policy become effective, self-reported a second DWI and were dismissed; and the one exception was an employee who was arrested twice for DWI after the policy became effective, but who was not terminated because at that time, the employer was reviewing the policy and had not determined that termination was appropriate for a second offense, plaintiff's termination was appropriate because the employer placed substantial evidence in the record to justify the action taken and to explain the alleged differences in the treatment of other employees. *Sais v. N.M. Dep't of Corr.*, 2012-NMSC-009, 275 P.3d 104.

Applicability of State Rules Act to disciplinary rules for prisoners. — Disciplinary rules promulgated by the secretary of corrections, governing the conduct of prisoners confined within a penitentiary, were not required to be filed with the state's record center in the manner required under the State Rules Act. *Johnson v. Francke*, 1987-NMCA-029, 105 N.M. 564, 734 P.2d 804.

Status of secretary of corrections. — The secretary of corrections is not a "law enforcement officer" for purposes of the Tort Claims Act, Section 41-4-3 NMSA 1978. *Anchondo v. Corrections Dep't*, 1983-NMSC-051, 100 N.M. 108, 666 P.2d 1255.

Rules promulgated pursuant to statutory authority may have force and effect of law. 1980 Op. Att'y Gen. No. 80-04.

No responsibility by state records center to determine compliance of promulgated rules with hearing and notice requirements. 1978 Op. Att'y Gen. No. 78-07.

9-3-5.1. Secretary of corrections; additional powers; corrections education scholarship program.

A. The secretary of corrections may enter into an agreement with the board of regents of the New Mexico military institute under which the institute would offer corrections education scholarships to New Mexico residents interested in careers in corrections. The agreement may provide criteria for recruiting scholarship applicants

and awarding scholarships and for internship programs at corrections department facilities for scholarship recipients.

B. Subject to available appropriations, the secretary of corrections may transfer funds each fiscal year to the board of regents of the New Mexico military institute for the scholarship program for New Mexico residents interested in careers in corrections.

History: Laws 2005, ch. 163, § 2.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 163 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

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 [Chapter 10, Article 9 NMSA 1978].

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

ANNOTATIONS

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

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. 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 [Chapter 10, Article 9 NMSA 1978], unless otherwise provided by law.

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

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

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

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

For state budgets, *see* 6-3-1 to 6-3-25 NMSA 1978.

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

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

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

(1) keeping all official records of the department;

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

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

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

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

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

ANNOTATIONS

Effective dates. — Laws 1977, ch. 257, § 108 made Laws 1997, ch. 257, § 9 effective March 31, 1978.

Cross references. — For the Federal Omnibus Crime Control and Safe Streets Act of 1968, *see* various sections throughout Titles 5, 18, 40, 42 and 47 U.S.C.

For the federal Juvenile Justice and Delinquency Prevention Act of 1974, *see* 42 U.S.C. § 5601 et seq.

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.

ANNOTATIONS

Effective dates. — Laws 1977, ch. 257, § 108 made Laws 1997, ch. 257, § 10 effective March 31, 1978.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1981, ch. 73, § 8 provided that all references in law to the criminal justice department shall be construed to be references to the corrections department.

9-3-10. New Mexico sentencing commission; creation; membership; duties.

A. There is created the "New Mexico sentencing commission".

B. The New Mexico sentencing commission shall be composed of twenty-seven members. Appointed members shall serve at the pleasure of the appointing authority. The commission shall reflect reasonable geographical and urban-rural balances and regard for the incidence of crime and the distribution and concentration of law enforcement services in the state. The commission shall consist of the following individuals or their designees:

(1) the attorney general;

(2) a district attorney appointed by the New Mexico district attorney's association or its successor agency;

(3) the chief public defender;

(4) two district court judges, one of whom shall be a children's court judge, appointed by the district and metropolitan judges association or its successor agency;

(5) a magistrate judge appointed by the chief justice of the supreme court;

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

(7) the secretary of corrections;

(8) the secretary of public safety;

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

(10) the secretary of public education;

(11) a representative from the behavioral health services division of the human services department [health care authority department];

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

(13) two public members appointed by the governor, one of whom shall be designated as chair of the New Mexico sentencing commission by the governor;

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

(15) one public member appointed by the minority floor leader of the senate;

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

(17) one public member appointed by the minority floor leader of the house of representatives;

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

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

(20) one public member appointed by the governor who is a representative of a New Mexico victims' organization.

C. A majority of the members of the New Mexico sentencing commission constitutes a quorum for the transaction of commission business.

D. The New Mexico sentencing commission shall:

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

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

(3) prepare an annual budget;

(4) establish policies for the operation of the commission and supervision of the activities of commission staff;

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

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

(7) annually assess, monitor and report to the legislature on the impact of any enacted sentencing standards and guidelines on state and local correctional resources and programs and the need for further sentencing reform;

(8) when developing proposed sentencing reform:

(a) study sentencing models in other jurisdictions;

(b) study the Criminal Sentencing Act [Chapter 31, Article 18 NMSA 1978], the Criminal Code [30-1-1 NMSA 1978] and all other New Mexico statutes relating to criminal law, criminal sentencing, criminal procedure and probation and parole;

(c) review past studies or reports regarding proposed changes to the Children's Code [Chapter 32A NMSA 1978], the Criminal Code, the Criminal Sentencing Act or other New Mexico statutes relating to criminal law, criminal sentencing, criminal procedure or probation and parole;

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

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

(f) determine the principal purpose for criminal sanctions;

(g) rank criminal offenses by degree of seriousness;

(h) determine the role of criminal history in making criminal sentencing decisions;

(i) define dispositional policy that determines when adult felony offenders are confined in state prisons and county jails or sentenced to nonprison and intermediate sanctions;

(j) establish the length of criminal sentences;

(k) establish the appropriate use of community service and fines;

(l) structure proposed sentencing guidelines to ensure consistency in all aspects of criminal sentencing policy;

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

(n) use the expertise of a national or state organization with experience in sentencing reform; and

(o) present proposed legislation or recommendations regarding sentencing reform to the appropriate legislative interim committee;

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

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

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

(12) review all proposed legislation that creates a new criminal offense, changes the classification of an offense or changes the range of punishments for an offense and make recommendations to the legislature as to whether proposed changes would improve the criminal and juvenile justice system;

(13) contingent upon the availability of funding, provide impact estimates, incorporating prison population projections, on all proposed legislation that has the potential to affect correctional resources;

(14) create and maintain a data-sharing network to receive, store, analyze and disseminate criminal justice data for and between participating criminal justice and behavioral health agencies for the purpose of evaluating local and statewide criminal justice systems and programs and supporting, encouraging and accomplishing information sharing among criminal justice agencies and criminal justice coordinating councils;

(15) provide data analysis as requested by criminal justice agencies and criminal justice coordinating councils; and

(16) promulgate rules governing the data- sharing network and data analysis pursuant to Paragraphs (14) and (15) of this subsection. The rules shall include procedures to:

(a) fulfill any requirements related to data privacy, security and protection so that information access and sharing is permitted for authorized purposes, as defined by law, court order or for business practices that are a necessary component of the requesting agency's duties and functions and is compatible with the purpose and expectations of use under which the information was collected;

(b) guide participating agencies to ensure accuracy, completeness, currency and reliability of information reported to the data-sharing network;

(c) allow data querying and reporting tools for those authorized users who want to perform statistical analysis of some of the data collected and retained;

(d) provide safeguards to actively monitor and record: 1) access and use of the network's services and systems; and 2) the nature of information exchanges using the network; and

(e) identify and recognize authorized users who access the network.

E. The members of the New Mexico sentencing commission shall be paid pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other perquisite, compensation or allowance.

F. The New Mexico sentencing commission is administratively attached to the office of the governor.

History: 1978 Comp., § 9-3-10, enacted by Laws 1977, ch. 257, § 11; 1979, ch. 202, § 5; 1980, ch. 150, § 7; 1981, ch. 73, § 7; 1994, ch. 19, § 1; 2003, ch. 75, § 1; 2007, ch. 9, § 2; 2019, ch. 192, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

The 2019 amendment, effective July 1, 2019, added three members to the New Mexico sentencing commission, and required the New Mexico sentencing commission to create a data-sharing network for criminal justice data; in Subsection B, after "composed of", changed "twenty-four" to "twenty-seven", in Paragraph B(4), after "appointed by the district", changed "court judge's" to "metropolitan judges", in Paragraph B(5), after "a", added "magistrate", after the next occurrence of "judge", deleted "from the court of appeals", and after "chief", deleted "judge of the court of appeals" and added "justice of the supreme court", added a new Paragraph B(11) and redesignated former Paragraphs B(11) through B(13) as Paragraphs B(12) through B(14), respectively, added a new Paragraph B(15) and redesignated former Paragraph B(14) as Paragraph B(16), added a new Paragraph B(17) and redesignated former Paragraphs B(15) through B(17) as Paragraphs B(18) through B(20), respectively; and in Subsection D, added Paragraphs D(14) through D(16).

The 2007 amendment, effective July 1, 2007, changed the number of members from twenty-three to twenty-four in Subsection B and added the secretary of public education as a member in Subsection B(10).

The 2003 amendment, effective July 1, 2003, substituted "New Mexico sentencing commission" for "criminal and juvenile justice coordinating council" in the section heading; substituted "New Mexico sentencing commission" for "criminal and juvenile justice coordinating council" throughout the section; substituted "twenty-three" for "fifteen" preceding "members" near the end of the first sentence of Subsection B; substituted "commission" for "council" throughout the section; substituted "school" for "college" following "New Mexico" near the end of Subsection B(6); in Subsection B(16) substituted "appointed by the governor who is a representative of a" for "who is the president of the" following "one public member" near the beginning and deleted "assistance" following "victim" near the end; inserted "justice" following "juvenile" near the middle of Subsection D(6); substituted present Subsection D(7) for former Subsection D(7); and inserted a Subsection D(8) designation and rewrote the rest of Subsection D.

The 1994 amendment, effective July 1, 1994, inserted "and juvenile" in the section heading and in Subsection A; in Subsection B, substituted Paragraphs (1) to (15) for former Paragraphs (1) to (4), relating to the same subject matter and, in the introductory paragraph, inserted "and juvenile" and substituted "nineteen" for "not less than fifteen nor more than twenty" in the first sentence, substituted the present second sentence for the former second sentence, which read: "All members except the automatic members shall be appointed by the governor", and rewrote the last sentence, which read: "Until

mandated otherwise by federal law or regulation as a condition to receiving federal funds, the council shall consist of"; substituted present Subsections C and D for former Subsection C, relating to the duties of the criminal justice coordinating council; redesignated former Subsection D as present Subsection E and, in that subsection, inserted "and juvenile" and deleted "who are not representing governmental entities" following "council"; and added Subsection F.

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

A. The New Mexico sentencing commission is authorized to inspect, copy, receive and review all records, data and information in the possession of state, county and local government agencies, except records, data or information that:

(1) is privileged under the rules of evidence;

(2) compromises or tends to disclose any privileged record or information; or

(3) consists of reports, memoranda or other internal documents given to or communications made to a prosecutor or defense attorney in connection with the investigation, prosecution or defense of a criminal case.

B. The New Mexico sentencing commission shall promulgate rules setting forth procedures for inspecting, copying, receiving, reviewing and reporting records, data and information necessary to fulfill its duties. State, county and local government agencies shall assist the commission in obtaining the records, data and information necessary to fulfill the commission's duties. All records, data and information received or obtained by the commission shall have the same status with regard to access or release as when the records, data or information was in the possession of the entity from which the commission received it.

History: 1978 Comp., § 9-3-10.1, enacted by Laws 1994, ch. 19, § 2; 2003, ch. 75, § 2.

ANNOTATIONS

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

The 2003 amendment, effective July 1, 2003, substituted "New Mexico sentencing commission" for "criminal and juvenile justice coordinating council" throughout the section; substituted "commission" for "council" throughout the section; substituted "is" for "are" at the beginning of Subsection A(1); in Subsection A(2), substituted "compromises" for "compromise" at the beginning and substituted "tends" for "tend" near the middle; substituted "consists of" for "are" at the beginning of Subsection A(3), and made stylistic changes.

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

The New Mexico sentencing commission may, in the name of the state, accept grants, donations or gifts to carry out its functions and purposes.

History: 1978 Comp., § 9-3-10.2, enacted by Laws 1994, ch. 19, § 3; 2003, ch. 75, § 3.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, substituted "New Mexico sentencing commission" for "criminal and juvenile justice coordinating council" near the beginning of the section.

9-3-10.3. Legislation to increase, decrease or create periods of imprisonment; fiscal impact statements; procedure.

A. The New Mexico sentencing commission shall prepare a fiscal impact statement as provided in this section for a bill that:

(1) creates a new crime or repeals an existing crime for which imprisonment is authorized;

(2) increases or decreases the period of imprisonment authorized for an existing crime;

(3) imposes or removes mandatory minimum terms of imprisonment; or

(4) modifies the law governing release of inmates in such a way that the time served in prison will increase or decrease.

B. A fiscal impact statement shall reflect the estimated change in annual operating costs for the corrections department attributable to the bill if it becomes law. The estimated change in annual operating costs shall reflect the largest annual change from the projected change for the six fiscal years following the effective date of the law and shall be calculated in current dollars. The fiscal impact statement shall include details concerning any increase or decrease in the inmate population.

C. If the New Mexico sentencing commission does not have sufficient information to project the fiscal impact, the fiscal impact statement shall state that there is insufficient information to estimate the fiscal impact.

D. The corrections department shall annually provide the New Mexico sentencing commission with:

(1) the average operating costs per inmate and the number of inmates in adult correctional facilities; and

(2) admissions and release data for all inmates in adult correctional facilities.

E. The judiciary shall annually provide the New Mexico sentencing commission with requested data necessary to prepare fiscal impact statements.

F. As used in this section, "operating costs" means all costs other than capital outlay costs for state-operated adult correctional facilities and privately operated adult correctional facilities.

History: Laws 2019, ch. 211, § 16.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 211, § 17 made Laws 2019, ch. 211 effective July 1, 2019.

9-3-11. Administrative attachment.

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

(1) the adult parole board; and

(2) the governor's organized crime prevention commission.

B. All powers and duties vested in the entities enumerated in this section shall remain unamended by the provisions of the Corrections Department Act.

History: 1978 Comp., § 9-3-11, enacted by Laws 1977, ch. 257, § 12; 2013, ch. 195, § 1.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, removed the public defender department from administrative attachment to the corrections department; in Subsection A, in the introductory sentence, after "attached to the", added "corrections"; deleted former Paragraph (3) of Subsection A, which administratively attached the public defender department to the corrections department; and in Subsection B, after "provisions of the", deleted "Criminal Justice" and added "Corrections".

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 [Chapter 9, Article 3 NMSA 1978]. 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.

ANNOTATIONS

Effective dates. — Laws 1977, ch. 257, § 108 made Laws 1997, ch. 257, § 13 effective March 31, 1978.

9-3-13. Sex offender management board; creation; membership; duties.

A. There is created within the New Mexico sentencing commission the "sex offender management board". Members of the sex offender management board who are not members of the New Mexico sentencing commission, whose membership is set forth in Section 9-3-10 NMSA 1978, shall not be voting members of the New Mexico sentencing commission.

B. The sex offender management board shall be composed of the following members:

(1) the attorney general or designee;

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

(3) the chief public defender or designee;

(4) a district court judge appointed by the district court judge's association of New Mexico;

(5) the secretary of corrections or designee;

(6) the secretary of health or designee;

(7) the secretary of children, youth and families or designee;

(8) the secretary of public safety or designee;

(9) the secretary of public education or designee;

(10) the secretary of Indian affairs or designee;

(11) one public member appointed by the governor who is a board member of a New Mexico victims organization;

(12) two representatives appointed by the governor who are mental health professionals licensed to practice in New Mexico. One of the mental health professionals shall be a member of the association for the treatment of sexual abusers and one shall be a juvenile sex offender treatment specialist;

(13) a representative appointed by the governor from the adult probation and parole division of the corrections department who has expertise in the supervision of sex offenders;

(14) a representative appointed by the governor from the law enforcement community who has expertise regarding sex offender community notification, registration, tracking and monitoring;

(15) a representative appointed by the governor who is affiliated with a civil liberties organization; and

(16) a representative appointed by the governor who is affiliated with a faith-based organization.

C. The sex offender management board shall report its findings and recommendations to the New Mexico sentencing commission on a quarterly basis. The New Mexico sentencing commission shall vote to approve, disapprove or revise the recommendations of the board.

D. The sex offender management board shall:

(1) hold meetings at times and for periods as the board deems necessary to accomplish its objectives, but shall meet at least eight times a year;

(2) develop and prescribe a standard procedure for the identification and evaluation of convicted sex offenders. The procedure shall include behavior management, monitoring, treatment and program compliance for sex offenders. The board shall develop and recommend measures of success;

(3) develop and recommend guidelines and standards for the treatment of sex offenders that can be utilized by offenders who are placed on probation, incarcerated with the corrections department, placed on parole or placed in a community corrections program. The guidelines and standards shall include a monitoring process and a plan for developing treatment programs for sex offenders, including determining the duration, terms and conditions of probation and parole for sex offenders;

(4) create a risk assessment screening tool and program to assist sentencing of sex offenders, including determining the duration, terms and conditions of probation and parole for sex offenders;

(5) develop guidelines and standards for monitoring sex offenders who are undergoing evaluation or treatment, including behavioral monitoring;

(6) develop criteria for measuring a sex offender's progress in treatment programs. The parole board shall use the criteria approved by the New Mexico sentencing commission to determine whether a sex offender may appropriately be discharged from parole;

(7) develop a standardized procedure for the identification and evaluation of juvenile sex offenders. The procedure shall include behavior management, monitoring, treatment and program compliance for juvenile sex offenders. The board shall develop and implement measures of success;

(8) develop and recommend guidelines and standards for the treatment of juvenile sex offenders who are placed on probation, committed to a state agency, placed on parole or placed in a community corrections program;

(9) research and analyze safety issues raised when sex offenders live in a community;

(10) study and consider the viability and legality of a civil commitment program for sex offenders;

(11) research and determine the feasibility and legality of implementing indeterminate sentencing for sex offenders;

(12) study the use of clinical polygraph testing as a means to evaluate sex offenders;

(13) evaluate sex offender treatment programs administered by state agencies and recommend changes, if needed, in those treatment programs; and

(14) review the provisions of the Sex Offender Notification and Registration Act [Sex Offender Registration and Notification Act] [Chapter 29, Article 11A NMSA 1978] and recommend changes, if needed, to that act.

E. The members of the sex offender management board shall be paid pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other perquisite, compensation or allowance.

History: Laws 2003 (1st S.S.), ch. 1, § 1; 2005 ch. 19, § 1; 2007, ch. 123, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

The 2007 amendment, effective July 1, 2007, added the secretary of public education and the secretary of Indian affairs to the sex offender management board.

The 2005 amendment, effective June 17, 2005, added the secretary of public safety as a member of the sex offender management board and authorized the appointment of designees for certain board members.

ARTICLE 4
Educational Finance and Cultural Affairs Department (Repealed.)

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

ANNOTATIONS

Repeals. — Laws 1980, ch. 151, § 58, repealed 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.

ARTICLE 4A
Cultural Affairs Department

9-4A-1. Short title.

Chapter 9, Article 4A NMSA 1978 may be cited as the "Cultural Affairs Department Act".

History: Laws 2004, ch. 25, § 1; 2007, ch. 269, § 1.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, changed the statutory reference to the act.

9-4A-2. Purpose.

The purpose of the Cultural Affairs Department Act is to create a single, unified department to administer all laws and exercise all functions formerly administered and executed by the office of cultural affairs.

History: Laws 2004, ch. 25, § 2.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 25 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-4A-3. Definitions.

As used in the Cultural Affairs Department Act:

A. "department" means the cultural affairs department; and

B. "secretary" means the secretary of cultural affairs.

History: Laws 2004, ch. 25, § 3.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 25 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-4A-4. Department created.

The "cultural affairs department" is created in the executive branch. The department is a cabinet department and includes the following divisions:

A. the administrative services division;

B. the arts division;

C. the historic preservation division;

D. the library division;

E. the Hispanic cultural division;

F. the farm and ranch heritage museum division;

G. the natural history and science museum division;

H. the museum of space history division;

I. the museum resources division;

J. the veterans museum division; and

K. the following divisions that make up the museum of New Mexico:

(1) the palace of the governors state history museum division;

(2) the New Mexico museum of art division;

(3) the museum of Indian arts and culture division;

(4) the museum of international folk art division;

(5) the archaeology division; and

(6) the state historic sites and monuments division.

History: Laws 2004, ch. 25, § 4; 2007, ch. 269, § 2; 2009, ch. 33, § 9; 2013, ch. 67, § 1.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, renamed the archaeological services and the state monuments divisions; in Paragraph (5) of Subsection K, after "the", deleted "archaeological services" and added "archaeology"; and in Paragraph (6) of Subsection K, after "the state", deleted "monuments" and added "historic sites and monuments".

The 2009 amendment, effective July 1, 2009, added Subsection J.

The 2007 amendment, effective June 15, 2007, changed the name of the museum services division to the museum resources division and the name of the museum of fine art division to the New Mexico museum of art division and provided that all statutory references to the museum of fine art refer to the New Mexico museum of art division.

9-4A-5. Secretary.

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

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

History: Laws 2004, ch. 25, § 5.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 25 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-4A-6. Secretary; duties and general powers.

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

B. To perform the secretary's 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 the Cultural Affairs Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and rules;

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

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

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

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to ensure implementation of and compliance with the provisions of law for whose administration or execution the secretary 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 the 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; and

(10) appoint, with the governor's consent, for each division, a "director". These appointed positions are exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978]. Persons appointed to these positions shall serve at the pleasure of the secretary.

C. The secretary may:

(1) apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including United States government funds, available to the department to carry out its programs, duties or services; and

(2) acquire by purchase, gift, endowment or legacy real or personal property and hold title to that property in the name of the department for the purpose of promoting, encouraging and supporting the performing arts in New Mexico. Property acquired pursuant to this paragraph shall be held under the control and authority of the department.

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 procedural rules as may be necessary to carry out the duties of the department and its divisions. A rule promulgated by the director of a division in carrying out the functions and duties of the division shall not be effective until approved by the secretary. Unless otherwise provided by statute, a rule affecting a person or agency outside the department shall not be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, 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 rule or proposed amendment or repeal of an existing rule 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 shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

F. The secretary may authorize vendors to sell tickets, passes or other department products in compliance with rules adopted by the secretary. A vendor authorized to sell tickets, passes or other department products may retain a portion of the sale price.

History: Laws 2004, ch. 25, § 6; 2008, ch. 20, § 1; 2018, ch. 14, § 1.

ANNOTATIONS

The 2018 amendment, effective May 16, 2018, authorized the secretary of cultural affairs to authorize vendors to sell tickets, passes or other department products in compliance with rules adopted by the secretary; in Paragraph C(2), after "authority of the", deleted "cultural affairs"; and added Subsection F.

The 2008 amendment, effective May 14, 2008, added Paragraph (2) of Subsection C.

9-4A-7. Organizational units of the department; powers and duties specified by law; access to information.

A. Those organizational units of the department and the officers of those units specified by law shall have all 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.

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

History: Laws 2004, ch. 25, § 7.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 25 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-4A-8. Division directors.

Except as otherwise provided by law, the secretary shall appoint, with the approval of the governor, "directors" of divisions established within the department. The directors so appointed are exempt from the Personnel Act [Chapter 10, Article 9 NMSA 1978].

History: Laws 2004, ch. 25, § 8.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 25 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-4A-9. Bureau chiefs.

The secretary may establish within each division such "bureaus" as the secretary deems necessary to carry out the provisions of the Cultural Affairs Department Act. The secretary shall appoint a "chief" to be the administrative head of a bureau. The chief and all subsidiary employees of the department are covered by the Personnel Act [Chapter 10, Article 9 NMSA 1978], unless otherwise provided by law.

History: Laws 2004, ch. 25, § 9.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 25 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-4A-10. Administrative services division; duties.

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

A. keeping all official records of the department;

B. providing clerical services in the areas of personnel and budget preparation; and

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

History: Laws 2004, ch. 25, § 10.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 25 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-4A-11. Recompiled.

History: 1941 Comp., § 3-3-931, enacted by Laws 1949, ch. 74, § 1; 1953 Comp., § 4-12-31; Laws 1977, ch. 246, § 24; 1978 Comp., §18-3-8; 1980, ch. 151, § 28; 2004, ch.

25, § 20; recompiled as 9-4A-11 by Laws 2004, ch. 25, § 52; recompiled as § 18-3-11 by Laws 2015, ch. 19, § 19.

ANNOTATIONS

Recompilations. — Laws 2015, ch. 19, § 19 recompiled 9-4A-11 NMSA 1978 as 18-3-11 NMSA 1978, effective July 1, 2015.

9-4A-12. Museum resources division.

The "museum resources division" is created within the department. The museum resources division shall provide support in exhibitions, statewide education services, publishing and other services requested by the museums or the secretary.

History: Laws 2004, ch. 25, § 12; 2007, ch. 269, § 3.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, changed the name of the museum services division to the museum resources division.

9-4A-13. Recompiled.

History: Laws 2004, ch. 25, § 13; 2007, ch. 269, § 4; 1978 Comp., § 9-4A-13, recompiled § 18-3-12 NMSA 1978 by Laws 2015, ch. 19, § 19.

ANNOTATIONS

Recompilations. — Laws 2015, ch. 19, § 19 recompiled 9-4A-13 NMSA 1978 as 18-3-12 NMSA 1978, effective July 1, 2015.

9-4A-14. Recompiled.

History: Laws 2004, ch. 25, § 14; 1978 Comp., § 9-4A-14, recompiled § 18-3-13 NMSA 1978 by Laws 2015, ch. 19, § 19.

ANNOTATIONS

Recompilations. — Laws 2015, ch. 19, § 19 recompiled 9-4A-14 NMSA 1978 as 18-3-13 NMSA 1978, effective July 1, 2015.

9-4A-15. Recompiled.

History: Laws 2004, ch. 25, § 15; 1978 Comp., § 9-4A-15; recompiled as § 18-3-14 NMSA 1978 by Laws 2015, ch. 19, § 19.

ANNOTATIONS

Recompilations. — Laws 2015, ch. 19, § 19 recompiled 9-4A-15 NMSA 1978 as 18-3-14 NMSA 1978, effective July 1, 2015.

9-4A-16. Recompiled.

History: Laws 2004, ch. 25, § 16; 1978 Comp., § 9-4A-16, recompiled as § 18-3-15 NMSA 1978 by Laws 2015, ch. 19, § 19.

ANNOTATIONS

Recompilations. — Laws 2015, ch. 19, § 19 recompiled 9-4A-16 NMSA 1978 as 18-3-15 NMSA 1978, effective July 1, 2015.

9-4A-17. Recompiled.

History: Laws 2004, ch. 25, § 17; 2013, ch. 67, § 2; 1978 Comp., § 9-4A-17, recompiled as § 18-3-16 NMSA 1978 by Laws 2015, ch. 19, § 19.

ANNOTATIONS

Recompilations. — Laws 2015, ch. 19, § 19 recompiled 9-4A-17 NMSA 1978 as 18-3-16 NMSA 1978, effective July 1, 2015.

9-4A-18. Recompiled.

History: Laws 2004, ch. 25, § 18; 1978 Comp., § 9-4A-18, recompiled as § 18-3-17 by Laws 2015, ch. 19, § 19.

ANNOTATIONS

Recompilations. — Laws 2015, ch. 19, § 19 recompiled 9-4A-18 NMSA 1978 as 18-3-17 NMSA 1978, effective July 1, 2015.

9-4A-19. Expired.

History: Laws 2005, ch. 44, § 1.

ANNOTATIONS

Compiler's notes. — Section 9-4A-19 NMSA 1978, as enacted by Laws 2005, ch. 44, § 1, was a temporary provision that created the New Mexico coin commission to assist the governor in selecting designs to be submitted to the United States mint for the New Mexico state quarter for the fifty states' commemorative coin program. It has been

omitted from the NMSA 1978 since the New Mexico coin commission no longer functioned after July 1, 2008.

9-4A-20. Museum collections fund; created; purpose; national museum ethical guidelines.

A. The "museum collections fund" is created in the state treasury. The fund is a nonreverting fund, and income from investment of the fund shall be credited to the fund. The fund shall be administered by the cultural affairs department, and money in the fund is appropriated to the department as provided in Subsection B of this section.

B. The purpose of the fund is to receive proceeds from the deaccessioning of museum collection items of each state museum and to fund new acquisitions for the museums. To comply with national museum ethical guidelines, each museum may have a subaccount in the museum collections fund into which the proceeds of the deaccessioning of its collection items and income from investment of the proceeds are credited and out of which the museum may expend money for the sole purpose of acquiring objects for that museum's collection. Money in the fund shall be expended on warrant of the secretary of finance and administration pursuant to vouchers signed by the director of the appropriate museum division and the secretary of cultural affairs or the secretary's authorized representative.

History: Laws 2005, ch. 121, § 1.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 121 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

9-4A-21. Cultural affairs enterprise fund; created; administration.

The "cultural affairs department enterprise fund" is created as a nonreverting fund in the state treasury. Except as otherwise provided by law, the fund consists of appropriations to the fund, revenue generated by the department, proceeds from the disposition of department property, income from investment of the fund, gifts, grants, donations and bequests. The fund shall be administered by the department, and money in the fund is subject to appropriation by the legislature to the department to carry out the provisions of the Cultural Affairs Department Act and other laws administered by the department or any of its divisions. Disbursements from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of cultural affairs or the secretary's authorized representative.

History: Laws 2013, ch. 32, § 1.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 32 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

9-4A-22. State museums improvements and exhibits fund created; use.

A. The "state museums improvements and exhibits fund" is created in the state treasury. The fund consists of:

(1) money appropriated and transferred to the fund;

(2) gifts, grants, donations and bequests; and

(3) fifteen percent of the state museums' admission fees, facilities rentals and revenues earned from licensure or sale of intellectual property.

B. Earnings from investment of the state museums improvements and exhibits fund shall be credited to the fund. Money in the fund is appropriated to the department to be distributed to state museums pursuant to the provisions of this section. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of cultural affairs.

C. Money in the state museums improvements and exhibits fund shall be expended by the department for development, implementation and maintenance of exhibitions at state museums and for maintenance and repairs of state museum facilities. Revenues in the fund earned by a specific division shall be expended by that division.

D. As used in this section, "state museum" means a museum, historic site, monument, cultural center or laboratory administered by the department.

History: Laws 2005, ch. 277, § 1; 1978 Comp., § 18-3-9, recompiled as § 9-4A-22 by Laws 2015, ch. 19, § 1.

ANNOTATIONS

Recompilations. — Laws 2015, ch. 19, § 1 recompiled and amended 18-3-9 NMSA 1978 as 9-4A-22 NMSA 1978, effective July 1, 2015.

The 2015 amendment, effective July 1, 2015, provided for revenues earned from licensure or sale of intellectual property from the states' museums to be placed in the state museums improvements and exhibits fund; in Subsection A, in the introductory sentence, after the second occurrence of "fund", deleted "shall consist" and added "consists", in Paragraph (3) of Subsection A, after "fees", deleted "and", and after

"rentals" added "and revenues earned from licensure or sale of intellectual property; in Subsection B, after "appropriated to the", deleted "cultural affairs"; in Subsection C, after "expended by the", deleted "cultural affairs"; in Subsection D, after the second occurrence of "museum", deleted "state" and added "historic site", and after "administered by the", deleted "cultural affairs".

9-4A-23. Cultural affairs facilities infrastructure fund.

The "cultural affairs facilities infrastructure fund" is created in the state treasury. The cultural affairs department shall administer the fund, and money in the fund is appropriated to that department to pay the costs of planning, engineering, designing, constructing, renovating, repairing, equipping and furnishing department facilities and exhibits. Money in the fund shall consist of appropriations, distributions, gifts, grants, donations, income from investment of the fund and money otherwise accruing to the fund. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of cultural affairs. Money in the fund shall not revert to any other fund.

History: Laws 2020, ch. 42, § 2.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 42 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

ARTICLE 5
Energy and Minerals Department (Repealed.)

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

ANNOTATIONS

Repeals. — Laws 1987, ch. 234, § 84 repealed former 9-5-1 to 9-5-8 NMSA 1978, 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 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 is to establish a single, unified department to administer laws and exercise functions formerly administered and exercised by the energy and minerals department and the natural resources department.

History: Laws 1987, ch. 234, § 2.

9-5A-3. Department established.

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

(1) the administrative services division;

(2) the state parks division;

(3) the forestry division;

(4) the energy conservation and management division;

(5) the mining and minerals division; and

(6) the oil conservation division.

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

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

ANNOTATIONS

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

For game and fish, *see* Chapter 17 NMSA 1978.

For forestry, *see* Chapter 68 NMSA 1978.

For mines, *see* Chapter 69 NMSA 1978.

For oil conservation, *see* Chapter 70 NMSA 1978.

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

1997 Multiple Amendments. — Laws 1997, ch. 137, § 1 and Laws 1997, ch. 149, § 2 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 1997, ch. 149, § 2, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 1997, ch. 137, § 1 and Laws 1997, ch. 149, § 2 are described below. To view the session laws in their entirety, *see* the 1997 session laws on *NMOneSource.com*.

Laws 1997, ch. 149, § 2, effective June 20, 1997, in Subsection A(2), substituted "parks" for "park and recreation".

Laws 1997, ch. 137, § 1, effective July 1, 1997, at the end of Subsection A(3), deleted "which shall include a soil and water conservation bureau".

San Jon amphitheater maintenance. — The state park and recreation division (now state parks division) of the natural resources department may utilize state funds for the maintenance of the amphitheater at San Jon, constructed pursuant to the provisions of Laws 1980, ch. 19, § 3 and Laws 1982, ch. 70. 1982 Op. Att'y Gen. No. 82-05.

Operation of concessions. — The state park commission (now the state parks division) has authority to operate directly certain commercial facilities, commonly known as concessions, in state parks, if it desires to do so. 1958 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 Op. Att'y Gen. No. 51-5406.

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

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

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

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

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

81A C.J.S. States § 147.

9-5A-4. Divisions; duties.

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

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

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

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

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

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

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

History: Laws 1987, ch. 234, § 4; 1997, ch. 137, § 2; 2016, ch. 71, § 12; 2016, ch. 78, § 12.

ANNOTATIONS

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

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

The 2016 amendment, effective July 1, 2016, required the energy conservation and management division to administer laws and regulations relating to geothermal resources; in Subsection B, after "maintain records", deleted "and", and after "technology programs", added "and administer laws and regulations relating to geothermal resources"; in Subsection C, after "administer", deleted "all"; in Subsection E, after "shall administer", deleted "the", after "relating to oil", added "and", and after

"gas", deleted "and geothermal"; and in Subsection F, after "the state", deleted "park and recreation" and added "parks".

Laws 2016, ch. 71, § 12 and Laws 2016, ch. 78, § 12, both effective July 1, 2016, enacted identical amendments to this section. The section was set out as amended by Laws 2016, ch. 78, § 12. *See* 12-1-8 NMSA 1978.

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

State power not exclusive. — The provisions of Sections 68-2-14 and 68-2-16 NMSA 1978 and this section do not give the forestry division exclusive power to enforce and administer laws and regulations relating to timber harvesting and do not expressly prohibit local governments from enacting and enforcing such laws. *Rancho Lobo, Ltd. v. DeVargas*, 303 F.3d 1195 (10th Cir. 2002), cert. denied, 538 U.S. 906, 123 S. Ct. 1483, 155 L. Ed. 2d 225 (2003).

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 [Chapter 10, Article 9 NMSA 1978].

History: Laws 1987, ch. 234, § 6.

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

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

History: Laws 1997, ch. 149, § 3.

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. 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 [Chapter 10, Article 9 NMSA 1978].

History: Laws 1987, ch. 234, § 7.

ANNOTATIONS

Compiler's notes. — Laws 1987, ch. 234, § 83, effective July 1, 1987, provided 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 provided that all existing contracts and agreements shall be binding and effective on the newly created agencies and officers; and further provides that the secretary shall not reduce staff except by attrition, transfer, or dismissal for cause except for positions already vacant.

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

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

A. promoting, coordinating and monitoring the implementation of state clean alternative fuel transportation programs, including a mass transit demonstration project and other demonstration projects that place New Mexico on the leading edge of new clean fuel technologies;

B. coordinating and directing the provisions of the Alternative Fuel Conversion Act [Alternative Fuel Acquisition Act] [Chapter 13, Article 1B NMSA 1978]; and

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

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

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. The Alternative Fuel Conversion Act, referred to in Subsection B, was renamed the Alternative Fuel Acquisition Act by Laws 2002, Chapter 32. *See* 13-1B-1 NMSA 1978 et seq.

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

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

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

9-5A-9. Renewable energy and fuel cell demonstration project; secretary of energy, minerals and natural resources; duties.

The secretary of energy, minerals and natural resources shall conduct a practical demonstration of a grid-interconnected, real-time, net-metered, solar photovoltaic system and an ultra-high-efficiency co-generation fuel cell system powered by natural gas, propane, methanol or hydrogen to generate on-site electricity for government or public use. The solar photovoltaic electric generating system shall be sized and configured to comply with the federal energy management program's million solar roofs initiative. All demonstrations shall be accessible to the public. The secretary shall conduct an analysis that considers life-cycle costing of the new technologies, their appropriate uses and an evaluation of the economic and environmental benefits that might be derived from statewide introduction and application of the technology. The analysis shall also include price differentials of on-peak and off-peak electricity. Life-cycle costing shall be determined by computing the savings derived from the operation of the technology over its useful life, less purchase and operating costs. The goal of the project is to demonstrate a new generation of electric and fossil fuel technologies while providing an opportunity to evaluate their potential economic and environmental benefits. The secretary shall submit the results of the evaluations and recommendations to the second session of the forty-seventh legislature.

History: Laws 2003, ch. 129, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 129, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

9-5A-10. Secretary of energy, minerals and natural resources; additional duties.

The secretary of energy, minerals and natural resources shall develop a comprehensive watershed restoration strategy that sets guidelines for coordination with state and federal land management agencies and political subdivisions, including the soil and water conservation districts and other stakeholders. The strategy shall focus on removing the overabundance of woody vegetation, particularly non-native species of phreatophytes, that consume excessive amounts of water and on reestablishing the natural ecology of New Mexico. The strategy shall use:

A. incentives to encourage the formation of businesses to clear vegetation;

B. incentives to encourage biomass energy use; and

C. the use of inmates from the corrections department to assist with watershed cleanup.

History: Laws 2003, ch. 133, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 133, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

9-5A-11. Energy, minerals and natural resources department; uranium mine reclamation coordinator.

The secretary of energy, minerals and natural resources shall create a uranium mine reclamation coordinator position and employ additional staff as needed to coordinate the department's uranium mine and mill site reclamation activities and effectively collaborate and engage with the department of environment in carrying out the provisions of Section 1 [9-7A-16 NMSA 1978] of this 2022 act.

History: Laws 2022, ch. 26, § 2.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 26 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

ARTICLE 5B
Youth Conservation Corps

9-5B-1. Short title.

Chapter 9, Article 5B NMSA 1978 may be cited as the "New Mexico Youth Conservation Corps Act".

History: Laws 1992, ch. 91, § 1; 2019, ch. 117, § 5.

ANNOTATIONS

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

The 2019 amendment, effective July 1, 2019, changed "This act" to "Chapter 9, Article 5B NMSA 1978".

9-5B-2. Purpose.

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

History: Laws 1992, ch. 91, § 2.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 91 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 1992, 90 days after the adjournment of the legislature.

9-5B-3. Definitions.

As used in the New Mexico Youth Conservation Corps Act:

A. "commission" means the New Mexico youth conservation corps commission;

B. "corps" means the New Mexico youth conservation corps;

C. "corps member" means a person enrolled in the corps;

D. "department" means the energy, minerals and natural resources department;

E. "nonprofit organization" means any organization that has been granted an exemption from federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c) of the United States Internal Revenue Code of 1986, as amended or renumbered;

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

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

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

History: Laws 1992, ch. 91, § 3.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 91 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 1992, 90 days after the adjournment of the legislature.

Cross references. — For Section 501(c) of the United States Internal Revenue Code of 1986, *see* 26 U.S.C. § 501(c).

9-5B-4. Project objectives.

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

A. preserve, maintain and enhance natural resources;

B. rehabilitate and improve cultural, historical and agricultural resources;

C. benefit recreational areas and parks by improving their use and access;

D. assist in emergency operations, including fires, floods and rescue of lost or injured persons;

E. beautify, improve and restore urban areas; and

F. renovate community facilities, including those for the elderly or indigent.

History: Laws 1992, ch. 91, § 4.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 91 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 1992, 90 days after the adjournment of the legislature.

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

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

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

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

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

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

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

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

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

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

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

History: Laws 1992, ch. 91, § 5.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 91 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 1992, 90 days after the adjournment of the legislature.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1992, ch. 57, § 56 repealed the Youth Authority Act, as enacted by Laws 1988, ch. 101, §§ 1-16 and Laws 1990, ch. 32, §§ 1-2, effective July 1, 1992.

Laws 1992, ch. 57, § 52 provided that all references in law to the youth authority shall be construed to mean the children, youth and families department.

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

A. The commission may:

(1) accept gifts, devises, grants and donations from others to carry out the provisions of the New Mexico Youth Conservation Corps Act;

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

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

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

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

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

B. The commission shall:

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

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

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

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

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

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

History: Laws 1992, ch. 91, § 6; 2019, ch. 117, § 6; 2020, ch. 65, § 1.

ANNOTATIONS

The 2020 amendment, effective May 20, 2020, revised certain duties of the New Mexico youth conservation corps commission; and in Subsection B, after "New Mexico Youth Conservation Corps Act", deleted "including the outdoor equity grant program", and deleted former Paragraph B(4) and redesignated the succeeding paragraphs accordingly.

Temporary provisions. — Laws 2020, ch. 65, § 6, provided that on May 20, 2020:

A. all functions, appropriations, money, records and files of the New Mexico youth conservation corps commission relating to the outdoor equity grant program shall be transferred to the New Mexico outdoor recreation division of the economic development department;

B. all contractual obligations of the New Mexico youth conservation corps commission relating to the outdoor equity grant program shall be binding on the New Mexico outdoor recreation division; and

C. the rules, orders and decisions of the New Mexico youth conservation corps commission relating to the outdoor equity grant program shall remain in effect until repealed or amended.

The 2019 amendment, effective July 1, 2019, required the New Mexico youth conservation corps commission to administer the outdoor equity grant program and to adopt rules for the proper administration of the outdoor equity grant program; in Subsection B, Paragraph B(1), after "adopt rules", deleted "and regulations", and after "Youth Conservation Corps Act", added "including the outdoor equity grant program", in Paragraph B(2), after "rules", deleted "and regulations", and added a new Paragraph B(4) and redesignated former Paragraphs B(4) through B(6) as Paragraphs B(5) through B(7), respectively.

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

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

B. A sponsor's application shall include:

(1) a comprehensive work plan;

(2) a complete project cost estimate;

(3) the number of corps members required; and

(4) the estimated time necessary to complete the project.

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

(1) the opportunities the project provides in the development of skills, discipline and good work habits;

(2) the degree of difficulty in carrying out the project;

(3) the project's compliance with conservation and community service objectives, as set forth in Section 4 [9-5B-4 NMSA 1978] of the New Mexico Youth Conservation Corps Act;

(4) the sponsor's ability to contribute the necessary financial and human resources to the project; and

(5) the project's compatibility with concurrent corps projects, including the availability of the required corps work force.

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

History: Laws 1992, ch. 91, § 7.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 91 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 1992, 90 days after the adjournment of the legislature.

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

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

(1) are unemployed;

(2) are between the ages of fourteen and twenty-five years old;

(3) are New Mexico residents; and

(4) meet any additional eligibility standards for employment as deemed necessary by the commission.

B. Corps members are not entitled to any employee benefits provided to state employees under the Personnel Act [Chapter 10, Article 9 NMSA 1978]. Corps members shall be entitled to receive workers' compensation benefits provided by the commission.

History: Laws 1992, ch. 91, § 8.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 91 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 1992, 90 days after the adjournment of the legislature.

9-5B-9. Education; training.

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

B. On completion of employment, a corps member who has twelve full months of employment as a corps member during a period not to exceed forty-eight months and who has received satisfactory evaluations throughout the corps member's employment is entitled to receive as additional compensation five hundred dollars ($500) or a one thousand five hundred dollar ($1,500) educational tuition voucher at a New Mexico institution of higher education. The educational tuition voucher is valid for two years. If the corps member receives a satisfactory employment evaluation and the program manager determines that the corps member's employment was less than twelve months in a four-year period due to circumstances beyond the corps member's control, the program manager may authorize a partial compensation payment or a partial educational tuition voucher to that corps member.

History: Laws 1992, ch. 91, § 9; 2001, ch. 235, § 1; 2005, ch. 88, § 1.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, increased the amount of education vouchers to one thousand five hundred dollars.

The 2001 amendment, effective June 15, 2001, in Subsection B, substituted "twelve full months of employment" for "one full year of continuous employment"; inserted "during a period not to exceed forty-eight months"; deleted "public" preceding "institution of higher education" and substituted "less than twelve months in a four-year period" for "completed in less than a year".

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

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

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

History: Laws 1992, ch. 91, § 10.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 91 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 1992, 90 days after the adjournment of the legislature.

9-5B-10.1. Recompiled.

History: Laws 2019, ch. 117, § 7; § 9-5B-10.1 recompiled and amended as § 9-15-14.4 by Laws 2020, ch. 65, § 4.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 65, § 4 recompiled and amended former 9-5B-10.1 NMSA 1978 as 9-15-14.4 NMSA 1978, effective May 20, 2020.

9-5B-10.2. Recompiled.

History: Laws 2019, ch. 117, § 8; § 9-5B-10.2 recompiled and amended as § 9-15-14.5 by Laws 2020, ch. 65, § 5.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 65, § 5 recompiled and amended former 9-5B-10.2 NMSA 1978 as 9-15-14.5 NMSA 1978, effective May 20, 2020.

9-5B-11. Report by commission.

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

History: Laws 1992, ch. 91, § 11.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 91 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 1992, 90 days after the adjournment of the legislature.

ARTICLE 5C
Rio Grande Trail Commission

9-5C-1. Rio Grande trail commission created; membership; fund created; energy, minerals and natural resources department.

A. The "Rio Grande trail commission" is created to establish the Rio Grande trail to run the length of the state from Colorado to Texas. The Rio Grande trail shall be a recreation trail for New Mexico residents and visitors to enjoy the natural beauty of New Mexico and the Rio Grande and learn about the culture and history of New Mexico. The trail shall be established in a manner that seeks to minimize environmental impacts and preserve sensitive habitat. The commission shall define and recommend viable path routes of the Rio Grande Trail, mitigate challenges related to its establishment and define and recommend other features, facilities and enhancements needed on the trail. The commission shall also make recommendations to the legislature as needed and report annually to the governor and the appropriate interim committees that deal with water and natural resources and rural and economic development. The commission shall consist of members appointed by the secretary of energy, minerals and natural resources and shall include:

(1) the secretary of energy, minerals and natural resources or the secretary's designee;

(2) the secretary of economic development or the secretary's designee;

(3) the secretary of Indian affairs or the secretary's designee;

(4) the secretary of transportation or the secretary's designee;

(5) the secretary of tourism or the secretary's designee;

(6) a representative from each of the following:

(a) an organization with trail management experience;

(b) the state parks division of the energy, minerals and natural resources department;

(c) an organization that specializes in river ecology and conservation, with specific experience in the stated area of the organization's expertise; and

(d) an organization that specializes in bird ecology and conservation, with specific experience in the stated area of the organization's expertise; and

(7) two members of the public interested in the Rio Grande trail development.

B. The secretary shall appoint the chair from among the members of the commission and invite federal entities to be a part of the commission as non-voting members, including the:

(1) bureau of land management;

(2) bureau of reclamation;

(3) international boundary and water commission;

(4) national park service;

(5) United States army corps of engineers;

(6) United States fish and wildlife service;

(7) United States forest service; and

(8) the offices of the New Mexico congressional delegation.

C. The commission shall collaborate and cooperate with the national park service's historic trails project for the El Camino Real historic trail from Mexico to northern New Mexico when appropriate.

D. The commission shall be administratively attached to and staffed by the energy, minerals and natural resources department. Members of the commission are entitled to 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, contingent upon money being available for this purpose.

E. The commission shall:

(1) meet at least three times annually;

(2) define and recommend viable path routes of the Rio Grande trail that shall be contiguous where possible and include only land that is expressly authorized by the owner, including Indian nations, tribes or pueblos, for inclusion in the Rio Grande trail and not to be acquired by eminent domain;

(3) mitigate challenges related to the Rio Grande trail's establishment, including facilitating negotiations and discussions with landowners and jurisdictions surrounding the Rio Grande;

(4) define and recommend other features, facilities and enhancements needed on the Rio Grande trail;

(5) identify appropriate opportunities for river recreation along the trail;

(6) establish a Rio Grande trail commission web site to publish meeting notices, meeting minutes, commission trail recommendations and other appropriate materials;

(7) ensure that any recommended designation, construction and use of the trail will minimize environmental impacts;

(8) endeavor to avoid areas of significant habitat value and ensure that any recommended designation, design, construction or use of the trail will minimize the impact on habitat;

(9) consider the impacts on private and commercial interests;

(10) make recommendations to the legislature as needed;

(11) prepare and report annually to the governor and the appropriate interim legislative committees related to water and natural resources and economic development;

(12) consult with representatives of the following regarding issues within their jurisdiction in development of the Rio Grande trail:

(a) each of the conservancy or irrigation districts served by water in the Rio Grande;

(b) acequias adjoining the Rio Grande;

(c) counties adjoining the Rio Grande;

(d) land grants adjoining the Rio Grande;

(e) municipalities adjoining the Rio Grande; and

(f) Indian nations, tribes or pueblos adjoining the Rio Grande;

(13) actively engage the public in the planning process of the Rio Grande trail and display meeting notices, meeting minutes and official commission trail proposals on the Rio Grande trail commission's web site;

(14) where feasible, develop multiple options of trail routing, construction design and potential enhancements;

(15) prior to making any final decisions regarding trail designation, design and construction, hold public meetings to solicit public input and allow for a written comment period;

(16) make a final recommendation based on all factors, including public comments and environmental impacts. In implementation of the Rio Grande trail, the secretary of energy, minerals and natural resources shall describe and publish any variance from commission recommendations on the commission's web site;

(17) to the extent feasible, select existing trails for the route of the Rio Grande trail;

(18) to the extent feasible, in the case of non-motorized existing trails, avoid widening these trails;

(19) in the case of new trails on public lands, construct the trails for non-motorized use; provided, however, that such trails may, but are not required to, be open to power-driven mobility devices for individuals with mobility impairments; and

(20) to the extent possible, avoid introduction of non-native material on the trail.

F. Eminent domain shall not be used to establish or construct the Rio Grande trail or features, facilities or enhancements associated with the trail.

G. The "Rio Grande trail fund" is created in the state treasury. The fund consists of appropriations, donations, grants to the fund, income from investment of the fund and money otherwise accruing to the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The energy, minerals and natural resources department shall administer the fund, and money in the fund is subject to appropriation by the legislature to the energy, minerals and natural resources department to develop, establish and support the Rio Grande trail. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources or the secretary's authorized representative.

History: Laws 2015, ch. 20, § 1.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 20, § 2 made Laws 2015, ch. 20, § 1 effective July 1, 2015.

ARTICLE 6
Department of Finance and Administration

9-6-1. Short title.

Sections 9-6-1 through 9-6-5.2 and 9-6-15 NMSA 1978 may be cited as the "Department of Finance and Administration Act".

History: 1978 Comp., § 9-6-1, enacted by Laws 1977, ch. 247, § 1; 2011, ch. 106, § 4.

ANNOTATIONS

The 2011 amendment, effective July 1, 2012, changed the statutory reference to the act.

ANNOTATIONS

9-6-2. Purpose.

The purpose of the Department of Finance and Administration Act is to make state government more efficient and responsive through consolidating, and eliminating the overlapping of, certain state government functions; and to establish a single, unified department to administer laws relating to finance of state government; and to perform other duties as provided by law.

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

ANNOTATIONS

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

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

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

(1) the board of finance division;

(2) the financial control division;

(3) the local government division;

(4) the management and contracts review division; and

(5) the state budget division.

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

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

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

ANNOTATIONS

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

For municipal street improvement funds, *see* 3-34-1 to 3-34-5 NMSA 1978.

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

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

For public finances generally, *see* Chapter 6 NMSA 1978.

For financial control division, *see* 6-2-1 and 6-5-1 to 6-5-11 NMSA 1978.

For state budgets, *see* 6-3-1 to 6-3-25 NMSA 1978.

For local government finances, *see* 6-6-1 to 6-6-19 NMSA 1978.

For investment of public money, *see* 6-8-1 to 6-8-24 NMSA 1978.

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

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

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

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

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

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

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

ANNOTATIONS

Cross references. — For transfer of powers and duties from the superintendent of public instruction to the secretary of public education and transfer of powers and duties of state department of public education to the public education department, *see* 9-24-15 NMSA 1978.

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.

The phrase "effective date of this act", referred to in this section, means May 18, 1988, the effective date of Laws 1988, ch. 64, § 3.

The state superintendent of public instruction and the state board of education were created by N.M. Const., art. XII, § 6. The public school finance division of the department of finance and administration was created by Laws 1957, ch. 249 to advise and consult with the superintendent of public instruction. The administrative head of the public school finance division was the chief of the public school finance division. The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the "director" of the public school finance division as the administrative and executive head. Laws 1980, ch. 151, abolished the educational finance and cultural affairs department and the public school finance division was again placed under the department of finance and administration. Laws 1983, ch. 301, § 83, abolished the public school finance division of the department of finance and administration and § 69 of that act created the office of education of the department of finance and administration and designated the administrative and executive head of the office of education as the director of the office of education. Laws 1983, ch. 301, § 83 also provides that all references to the director or chief of public school finance shall be construed to be references to the director of the office of education. Laws 1988, ch. 64, § 3, compiled as 9-6-3.1 NMSA 1978, abolished the office of education and transferred all powers and duties of the office of education to 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 were transferred to the superintendent of public instruction. N.M. Const., art. XII, § 6 was amended effective September 23, 2003 to replace the former state board of education with the public education commission, replace the superintendent of public instruction with the secretary of public education and provide that the secretary of public education shall exercise all functions relating to the distribution of school funds and financial accounting for public schools. Laws 2004, ch. 25, § 27, compiled as 9-24-15 NMSA 1978, provides that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-4 and 9-24-15 NMSA 1978 and N.M. Const., art. XII, § 6 for the powers and duties of the secretary of public education.

9-6-3.2. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1983, ch. 301, § 16, recompiled former 9-6-3.2 NMSA 1978 as 15-1-2 NMSA 1978, effective July 1, 1983.

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

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

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

ANNOTATIONS

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

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

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

B. To perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or 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 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 [Chapter 10, Article 9 NMSA 1978]. Persons appointed to these positions shall serve at the pleasure of the secretary;

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

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

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

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

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

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

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

ANNOTATIONS

Cross references. — For state budgets, *see* 6-3-1 to 6-3-25 NMSA 1978.

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

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

Applicability of rulemaking procedures. — The risk management division's endorsement of a certificate of coverage issued to a county denying coverage for mandamus actions was a ministerial act, fulfilling the requirements of the Tort Claims Act, and not a discretionary decision altering the scope of the county's coverage; accordingly, the refusal to cover mandamus claims in the endorsement was not subject to rulemaking requirements. *Board of Cnty. Comm'rs v. Risk Mgmt. Div*., 1995-NMSC-046, 120 N.M. 178, 899 P.2d 1132.

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. 1978 Op. Att'y Gen. No. 78-07.

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

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

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

A. shall review federal grant applications and provide management assistance;

B. shall coordinate, in accordance with directives from the governor's office of policy and planning, state agency plans for economic, natural resource, energy resource and human resource development;

C. shall provide aid to planning and development districts in developing grant proposals, and cooperate with other local entities in developing grant proposals;

D. shall acquire, study and review all plans for capital projects proposed by state agencies and render advice on the plans. The secretary shall maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects;

E. may contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private;

F. may provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment. The secretary, incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government, and may participate in, or receive aid from, any federal or private program in relation to such a planning program or assistance;

G. shall confer with the state budget division of the department of finance and administration in developing comprehensive plans to assure coordination of planning and budgeting functions;

H. shall coordinate the state clearinghouse review process;

I. shall develop a status of the state report;

J. shall review and coordinate comment by state agencies on draft environmental impact statements;

K. shall provide community development block grant technical assistance to local governments;

L. shall administer, in consultation with and upon advice and direction from the community development block grant policy committee, the program for the state community development block grant program;

M. shall serve as staff to the New Mexico Association of Regional Councils;

N. shall maintain a state planning library; and

O. shall provide planning assistance to county and multicounty districts relative to application by such districts for financial assistance and for regional plan development.

History: Laws 1983, ch. 296, § 7.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 296, § 32 made Laws 1983, ch. 296, § 7 effective July 1, 1983.

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

9-6-5.2. Failure to timely submit audit reports or financial reports; enforcement powers of secretary.

A. Upon notification by the state auditor pursuant to Subsection G of Section 12-6-3 NMSA 1978 that a state agency, state institution, municipality or county has failed to submit an audit report as required by the Audit Act [12-6-1 to 12-6-14 NMSA 1978], the secretary of finance and administration shall order the agency, institution, municipality or county to submit monthly financial reports to the department of finance and administration until all past-due audit reports have been submitted to the state auditor and the secretary is satisfied that the agency, institution, municipality or county is in compliance with all financial and audit requirements.

B. If, ninety days after an order has been issued pursuant to Subsection A of this section to a state agency or state institution subject to periodic allotments, the agency or institution has not submitted all past-due reports or has not otherwise made progress, satisfactory to the state auditor, toward compliance with the Audit Act, the secretary may direct the state budget division to temporarily withhold periodic allotments to the agency or institution pursuant to Section 6-3-6 NMSA 1978. The amounts withheld and

the period of time for which the allotments are to be withheld shall be determined by the secretary subject to the following guidelines:

(1) the initial amount withheld shall not exceed five percent of the allotment and shall be for a period of no more than three months;

(2) every three months, the secretary shall determine if the agency or institution has submitted all past-due audit reports or has otherwise made progress, satisfactory to the state auditor, toward compliance with the Audit Act. If the secretary determines that past-due reports have not been submitted and that there has been inadequate progress, the secretary may direct that the amount being currently withheld be increased by an additional amount, up to another five percent of the allotment, for an additional period of up to three months; and

(3) upon a determination that all past-due audit reports have been submitted or that the agency or institution is otherwise making progress, satisfactory to the state auditor, toward compliance with the Audit Act, the secretary shall direct that all withheld amounts be distributed to the agency or institution and that future allotments shall be made in full.

C. If, ninety days after an order has been issued pursuant to Subsection A of this section to a municipality or county, the municipality or county has not submitted all past-due reports or has not otherwise made progress, satisfactory to the state auditor, toward compliance with the Audit Act, the secretary may direct the secretary of taxation and revenue to temporarily withhold distributions to the municipality or county pursuant to Section 7-1-6.15 NMSA 1978. The amounts withheld, the source of the amounts and the period of time for which the distributions are to be withheld shall be determined by the secretary of finance and administration subject to the following guidelines:

(1) transfers to a county or municipality of receipts from any local option gross receipts tax or from a tax imposed pursuant to the Local Liquor Excise Tax Act [7-24-8 to 7-24-16 NMSA 1978] shall not be withheld;

(2) the source and amount of a withheld distribution shall be determined in a manner that will not:

(a) impair any outstanding bonds or other obligations of the municipality or county; or

(b) interrupt a redirected distribution to the New Mexico finance authority pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement of the municipality or county and the New Mexico finance authority;

(3) the initial amount withheld shall not exceed five percent of the amount that would otherwise be distributed to the municipality or county pursuant to the Tax

Administration Act [Chapter 7, Article 1 NMSA 1978] and shall be for a period of no more than three months;

(4) every three months, the secretary of finance and administration shall determine if the municipality or county has submitted all past-due audit reports or has otherwise made progress, satisfactory to the state auditor, toward compliance with the Audit Act. If the secretary determines that past-due reports have not been submitted and that there has been inadequate progress, the secretary may direct that the amount being currently withheld be increased by an additional amount, up to another five percent of the amount that would otherwise be distributed, for an additional period of up to three months; and

(5) upon a determination that all past-due audit reports have been submitted or that the municipality or county is otherwise making progress, satisfactory to the state auditor, toward compliance with the Audit Act, the secretary shall direct that all withheld amounts be distributed to the municipality or county and that future distributions shall be made in full.

D. After receiving notice from the local government division of the department of finance and administration required by Subsection G of Section 6-6-2 NMSA 1978 that a municipality or county has failed to submit two consecutive financial reports pursuant to Subsection F of that section [6-6-2 NMSA 1978], the secretary may direct the secretary of taxation and revenue to temporarily withhold distributions to the municipality or county pursuant to Section 7-1-6.15 NMSA 1978. The amounts withheld, the source of the amounts and the period of time for which the distributions are to be withheld shall be determined by the secretary of finance and administration subject to the following guidelines:

(1) transfers to a county or municipality of receipts from any local option gross receipts tax or from a tax imposed pursuant to the Local Liquor Excise Tax Act shall not be withheld;

(2) the source and amount of a withheld distribution shall be determined in a manner that will not:

(a) impair any outstanding bonds or other obligations of the municipality or county; or

(b) interrupt a redirected distribution to the New Mexico finance authority pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement of the municipality or county and the New Mexico finance authority;

(3) the initial amount withheld shall not exceed five percent of the amount that would otherwise be distributed to the municipality or county pursuant to the Tax Administration Act and shall be for a period of no more than three months;

(4) every three months, the secretary of finance and administration shall determine if the municipality or county has submitted all past-due financial reports or has otherwise made progress, satisfactory to the local government division, toward compliance with the law. If the secretary determines that past-due reports have not been submitted and that there has been inadequate progress, the secretary may direct that the amount being currently withheld be increased by an additional amount, up to another five percent of the amount that would otherwise be distributed, for an additional period of up to three months; and

(5) upon a determination that all past-due financial reports have been submitted or that the municipality or county is otherwise making progress, satisfactory to the local government division, toward compliance with the law, the secretary shall direct that all withheld amounts be distributed to the municipality or county and that future distributions shall be made in full.

History: 1978 Comp., § 9-6-5.2, enacted by Laws 2011, ch. 106, § 5.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 106, § 7 made Laws 2011, ch. 106, § 5 effective July 1, 2012.

9-6-5.3. Repealed.

History: Laws 2022, ch. 56, § 1; repealed by Laws 2023, ch. 188, § 4.

ANNOTATIONS

Repeals. — Laws 2023, ch. 188, § 4 repealed 9-6-5.3 NMSA 1978, as enacted by Laws 2022, ch. 56, § 1, relating to distribution of funds, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

9-6-6. Repealed.

ANNOTATIONS

Repeals. — Laws 2004, ch. 25, § 53 repealed 9-9-6 NMSA 1978, as enacted by Laws 1977, ch. 247, § 6, relating to the office of cultural affairs, effective May 19, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com.*

9-6-7 to 9-6-11. Repealed.

ANNOTATIONS

Repeals. — Laws 2004, ch. 25, § 53 repealed 9-9-7 to 9-6-11 NMSA 1978, as enacted by Laws 1980, ch. 151, §§ 52 to 56, relating to the office of cultural affairs, effective May

19, 2004. For provisions of former sections, *see* the 2003 NMSA 1978 on *NMOneSource.com.*

9-6-12. Fort Stanton development commission; created.

A. There is created the "Fort Stanton development commission", which shall be administratively attached to the office of cultural affairs.

B. The commission shall consist of seven members selected as follows:

(1) the chair of the Lincoln county commission or the designee of the chair;

(2) the mayor of the village of Ruidoso or the designee of the mayor;

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

(4) the state historic preservation officer or the designee of the officer; and

(5) three members at large who are residents of Lincoln county and are appointed by the governor.

C. The chairman of the commission shall be elected annually from among the commission membership.

D. Appointed members shall serve for terms of six years each but the initial appointment shall be for two, four and six years to accomplish staggered terms. Vacancies in an appointed member's seat shall be filled for the remainder of the unexpired term in the same manner as the original appointment was made.

E. Appointed members shall receive no compensation but may be paid per diem and mileage as provided for nonsalaried officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: Laws 2003, ch. 126, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 126, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

9-6-13. Duties and powers.

A. The Fort Stanton development commission shall:

(1) plan, assemble, dispose of and acquire furnishings, art, landscaping materials and plants and other decorations for the public areas of Fort Stanton;

(2) monitor and report on the status of maintenance of Fort Stanton and recommend to the legislature actions necessary to repair, maintain and renovate the grounds and improvements; and

(3) develop statewide interest in Fort Stanton and develop a comprehensive plan for the most appropriate and beneficial use of Fort Stanton.

B. The commission may:

(1) utilize the assistance of individuals, the office of cultural affairs, other state agencies and nonprofit charitable corporations in carrying out its duties;

(2) accept on behalf of the state from any private or other public sources money, gifts, donations and bequests for use by the commission in carrying out its duties; and

(3) enter into public promotions of its endeavors and publish such materials as it deems appropriate to promote the purposes of the commission.

History: Laws 2003, ch. 126, § 2.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 126, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

9-6-14. Trust fund created.

The "Fort Stanton development fund" is created in the state treasury. The fund shall consist of all gifts, donations and bequests of money to the Fort Stanton development commission as well as any appropriations made to the commission. Earnings from the investment of the fund shall be credited to the fund. Expenditure from the fund shall be made only for the purposes for which the commission was created pursuant to vouchers signed by the chairman of the commission on warrants issued by the secretary of finance and administration.

History: Laws 2003, ch. 126, § 3.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 126, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

9-6-15. Department of finance and administration; office of education accountability.

A. The "office of education accountability" is created in the department of finance and administration. The office shall provide an independent evaluation of the Assessment and Accountability Act [Chapter 22, Article 2C NMSA 1978] and the School Personnel Act [Chapter 22, Article 10A NMSA 1978] by:

(1) monitoring the implementation of those acts;

(2) periodically reviewing school district and school-based decision-making policies relating to the recruitment and retention of school employees;

(3) verifying the accuracy of reports of public school, school district and state performance; and

(4) conducting studies of other states' efforts at assessment and accountability and other educational reforms and report its findings to the legislative education study committee and legislative finance committee.

B. The state department of public education, school districts and other agencies of the state or its political subdivisions shall cooperate with the office of education accountability and provide information as requested by the office.

History: Laws 2003, ch. 153, § 69.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

9-6-16. Rural equity ombud; local government division of the department of finance and administration.

A. The local government division of the department of finance and administration shall employ at least one "rural equity ombud", whose job it is to work on issues of concern to rural and frontier communities with:

(1) the governor's office, the legislature and all state agencies;

(2) counties and municipalities in the state;

(3) federal agencies, including the rural utilities service and the rural development agency of the United States department of agriculture, the United States department of the interior, the United States department of housing and urban development and other appropriate federal agencies; and

(4) nonprofit organizations that address issues faced by rural and frontier communities or provide services to residents of those communities.

B. The rural equity ombud shall be employed solely on the basis of education and experience.

C. The rural equity ombud shall:

(1) provide technical assistance to federal, state and local governments on issues of concern for rural and frontier communities;

(2) provide planning assistance to the state and counties to ensure that concerns of residents of rural and frontier communities are being addressed as part of the state's or a county's planning processes in:

(a) health;

(b) human services;

(c) educational services;

(d) economic development;

(e) infrastructure planning, funding and improvements, including water and wastewater, utilities, roads and highways, broadband and other infrastructure;

(f) public safety;

(g) transportation;

(h) land use and land development;

(i) tourism;

(j) energy;

(k) natural resource management, including game and fish resources;

(l) community development block grant projects;

(m)state or local planning in conjunction with federal agencies and funding; and

(n) any other planning processes that affect rural and frontier communities;

(3) serve as an advocate for rural and frontier communities and work to ensure that those communities' needs are met and that residents of rural and frontier communities have a voice in state and local government;

(4) take and resolve complaints from rural and frontier communities;

(5) provide bill analyses and provide testimony to the legislature on legislation that positively or negatively affects rural and frontier communities;

(6) make annual reports to the governor and the legislature on:

(a) activities of the ombud, including interactions with governmental agencies and the outcome of those interactions;

(b) complaints received and resolved;

(c) structural barriers to providing needed services to rural and frontier communities and recommendations for eliminating or ameliorating those barriers; and

(d) other information that may inform executive and legislative decisions affecting rural and frontier communities; and

(7) perform other duties as assigned by the director of the local government division of the department of finance and administration, the secretary of finance and administration, the governor or the legislature.

History: Laws 2021, ch. 62, § 1.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 62 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

Compiler's notes. — Laws 2021, ch. 62, § 2 provided that ninety-five thousand dollars ($95,000) is appropriated from the general fund to the local government division of the department of finance and administration for expenditure in fiscal year 2022 to carry out the purposes of 9-6-16 NMSA 1978. Any unexpended or unencumbered balance remaining at the end of fiscal year 2022 shall revert to the general fund.

9-6-17. Law enforcement workforce capacity building fund; law enforcement workforce capacity building fund committee; administration; distribution of funds; grant criteria.

A. The "law enforcement workforce capacity building fund" is created in the state treasury to support efforts to increase the available workforce of law enforcement officers, including initiatives to recruit and retain high-quality law enforcement officers. The fund consists of appropriations, gifts, grants and donations. Money in the fund is subject to appropriation by the legislature. Any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year shall revert to the general fund unless an appropriation provides a different period for expenditure.

B. The department of finance and administration shall administer the fund to:

(1) provide grant disbursements pursuant to Subsection J of this section; and

(2) fund administrative costs necessary to carry out the provisions of this section, including such administrative costs that are necessary to evaluate the efficacy of initiatives implemented by grantees to increase the available workforce of law enforcement officers and such administrative costs that are determined, in consultation with the committee, to be necessary to conduct workload studies, the results of which shall be used by the committee to improve the structure and criteria of the provisions of this section and to develop recommendations from the committee for policy or program measures to be considered by the legislature; provided that the amount expended for administrative costs shall not exceed three percent of the total appropriations to the fund.

C. Disbursements from the fund shall be made on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the chair of the committee.

D. The "law enforcement workforce capacity building fund committee" is created and is administratively attached to the department of finance and administration. The committee consists of the following four voting members:

(1) one member who is employed by the department of public safety, to be appointed by the secretary of public safety;

(2) one member who is employed by a municipal police department in the state, to be appointed by the New Mexico municipal league;

(3) one member who is employed by a county sheriff's office in the state, to be appointed by the New Mexico association of counties; and

(4) one member who is employed by the department of finance and administration, to be appointed by the secretary of finance and administration.

E. The committee shall elect a chair from among its membership.

F. The committee shall:

(1) conduct meetings once per year or more often as necessary to carry out its duties at the times and locations that the committee designates;

(2) develop criteria for the awarding of grants as provided in Subsection N of this section;

(3) periodically review the award criteria and recommend any amendments to the criteria based on the results of any workload studies or evaluations of grantee initiatives;

(4) award grants to law enforcement agencies as provided in Subsections J through M of this section;

(5) collect information about initiative expenditures from grantees as provided in Subsection Q of this section;

(6) report applicant and grantee information as provided in Subsection R of this section; and

(7) disseminate information regarding the program and application process to all eligible entities.

G. A majority of the members of the committee constitutes a quorum for the transaction of business.

H. A member of the committee shall not review or vote on a proposal made by an applicant with whom the member is employed. An employee of the department of public safety who is not employed by the New Mexico state police division of that department is not considered an employee of the New Mexico state police division of that department for purposes of this subsection.

I. Administrative and other necessary support shall be provided to the committee by the department of finance and administration.

J. The committee may allocate:

(1) up to twenty-five percent of the money in the fund, less administrative costs as provided in Paragraph (2) of Subsection B of this section, for grants awarded to entities whose primary jurisdiction is within a county with a population of at least five hundred thousand according to the most recent federal decennial census;

(2) up to thirty-five percent of the money in the fund, less administrative costs as provided in Paragraph (2) of Subsection B of this section, for grants awarded to entities whose primary jurisdiction is within a county with a population of at least one hundred thousand but less than five hundred thousand according to the most recent federal decennial census; and

(3) any amount of available money remaining in the fund for grants awarded to entities whose primary jurisdiction is within a county with a population of less than one hundred thousand according to the most recent federal decennial census.

K. For purposes of Subsection J of this section, if applicants whose primary jurisdictions are within different counties apply jointly for a grant, the applicants, if awarded a grant, would each receive an award amount based on that individual applicant's county.

L. Any local law enforcement agency is eligible to apply for a grant; provided that the agency is in compliance with applicable statutory reporting requirements, including those described in Subsection C of Section 29-3-11 NMSA 1978 and Sections 29-7-7.2, 29-7C-7 and 29-7C-8 NMSA 1978.

M. The New Mexico state police division of the department of public safety and all of its offices are eligible to apply for a grant; provided that:

(1) the application for a grant proposes to undertake initiatives in collaboration with a local law enforcement agency;

(2) the New Mexico state police division of the department of public safety is in compliance with applicable statutory reporting requirements, including those described in Subsection C of Section 29-3-11 NMSA 1978 and Sections 29-7-7.2, 29-7C-7 and 29-7C-8 NMSA 1978; and

(3) for purposes of Subsection J of this section, the primary jurisdiction of the New Mexico state police division of the department of public safety shall be based on the primary jurisdiction of the local law enforcement agency with which the division or the division's office has proposed to collaborate.

N. The committee shall develop grant criteria to guide its determination for the awarding of a grant, and the criteria shall:

(1) take into consideration an applicant's law enforcement officer vacancy rate;

(2) take into consideration cost of living and comparable market compensation for an applicant's locality;

(3) take into consideration crime rates in an applicant's locality;

(4) prioritize, in its consideration, an applicant's proposal for initiatives that target the recruitment of candidates who are experienced law enforcement officers not currently employed by a law enforcement agency within the state;

(5) prioritize, in its consideration, an applicant's proposal for initiatives to be undertaken in collaboration between local law enforcement agencies with overlapping jurisdiction;

(6) prioritize, in its consideration, law enforcement agency applicants that use or intend to use community-oriented policing or other evidence-based forms of policing; and

(7) prioritize, in its consideration, initiatives intended to increase agency investigative capacity, including initiatives to recruit or retain investigative personnel and initiatives to train existing personnel to serve as investigators.

O. A grantee may use a grant award to:

(1) provide a recruitment differential disbursement to newly hired law enforcement officers, including a recruitment differential disbursement for relocation expenses; provided that the law enforcement officer remains employed as a law enforcement officer with that same law enforcement agency for one additional year;

(2) provide a retention differential disbursement to law enforcement officers already employed by the applicant for the purpose of retention; provided that the law enforcement officer remains employed as a law enforcement officer with that same law enforcement agency for one additional year;

(3) implement professional development initiatives designed to recruit, train and retain law enforcement officers, including training in community-oriented policing or other evidence-based forms of policing; and

(4) implement campaigns to recruit in-state and out-of-state candidates.

P. A grantee shall not use a grant:

(1) for recurring initiatives, except the grantee may use a grant for a recurring initiative if the grantee has provided a plan to replace nonrecurring funds with recurring funds to fund that initiative; or

(2) to create new law enforcement officer positions or fund the base salary of existing law enforcement officer positions.

Q. A grantee shall provide to the committee within ninety days of receiving a grant, and then every ninety days thereafter until the earliest of either the completion of the grantee's initiative or all funds are expended, a report of the grantee's expenditures for

the grantee's initiative. Any unexpended money remaining after the completion of the grantee's initiative shall revert to the fund within sixty days of completion of the initiative.

R. The committee shall provide at least one annual report by November 1 of each fiscal year to the department of finance and administration and the legislative finance committee that contains:

(1) applicant information, including information about the applicant agency, the grant amount requested and the title and description of the applicant's proposed initiative;

(2) individual grantee information, including information about the grantee's agency, the grant amount awarded and the title and description of the grantee's initiative;

(3) data collected and evaluations made by the department of finance and administration about the efficacy of the initiatives of prior award recipients; and

(4) the status of any ongoing workload studies and the results of any workload studies completed since the time of the prior report.

S. As used in this section:

(1) "committee" means the law enforcement workforce capacity building fund committee;

(2) "fund" means the law enforcement workforce capacity building fund;

(3) "law enforcement agency" means a municipal police department, a county sheriff's office or the New Mexico state police division of the department of public safety;

(4) "law enforcement officer" means a certified full- or part-time salaried public employee of a municipal police department, a county sheriff's office or the New Mexico state police division of the department of public safety; and

(5) "local law enforcement agency" means a municipal police department or county sheriff's office.

History: 1978 Comp., § 9-6-17, enacted by Laws 2023, ch. 188, § 1.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

9-6-18. Public attorney workforce capacity building fund created; public attorney workforce capacity building fund committee; administration; grant criteria.

A. The "public attorney workforce capacity building fund" is created in the state treasury to support efforts to increase the available workforce of public defenders and prosecutors, including initiatives to recruit and retain public defenders and prosecutors. The fund consists of appropriations, gifts, grants and donations. Money in the fund is subject to appropriation by the legislature. Any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year shall revert to the general fund unless an appropriation provides a different period for expenditure.

B. The department of finance and administration shall administer the fund to:

(1) provide grant disbursements pursuant to Subsection I of this section;

(2) fund administrative costs necessary to carry out the provisions of this section, including such administrative costs that are necessary to evaluate the efficacy of initiatives implemented by grantees to increase the available workforce of public defenders and prosecutors; provided that the amount expended for administrative costs shall not exceed three percent of the total appropriations to the fund; and

(3) fund statewide initiatives to increase the available workforce of public defenders and prosecutors undertaken by the public defender department or the administrative office of the district attorneys or in collaboration between both agencies, as approved by the committee, including conducting workload studies, the results of which shall be used by the committee to improve the structure and criteria of the provisions of this section and to develop recommendations from the committee for policy or program measures to be considered by the legislature; provided that the amount expended shall not exceed six percent of the total appropriations to the fund.

C. Disbursements from the fund shall be made on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the chair of the committee.

D. The "public attorney workforce capacity building fund committee" is created and is administratively attached to the department of finance and administration. The committee consists of the following four voting members:

(1) two members who are employed by the administrative division of the public defender department, to be appointed by the chief public defender; and

(2) two members who are employed by the administrative office of the district attorneys, to be appointed by the director of the administrative office of the district attorneys.

E. The committee shall elect a chair from among its membership.

F. The committee shall:

(1) conduct meetings once per year or more often as necessary to carry out its duties at the times and locations that the committee designates;

(2) develop criteria for the awarding of grants as provided in Subsection K of this section;

(3) periodically review the award criteria and recommend any amendments to the criteria based on the results of any workload studies or evaluations of grantee initiatives;

(4) award grants to local offices of the public defender and local district attorney offices as provided in Subsection I of this section;

(5) review and approve proposals for statewide initiatives as provided in Paragraph (3) of Subsection B of this section;

(6) collect information about initiative expenditures from grantees as provided in Subsection N of this section;

(7) report applicant and grantee information as provided in Subsection O of this section; and

(8) disseminate information regarding the program and application process to all eligible entities.

G. A majority of the members of the committee constitutes a quorum for the transaction of business.

H. Administrative and other necessary support shall be provided to the committee by the department of finance and administration.

I. The committee may allocate:

(1) up to twenty-five percent of the money in the fund, less administrative costs as provided in Paragraph (2) of Subsection B of this section and funds expended for statewide initiatives as provided in Paragraph (3) of Subsection B of this section, for grants awarded to entities whose primary jurisdiction is within a judicial district having a population of at least five hundred thousand according to the most recent federal decennial census;

(2) up to twenty-six percent of the money in the fund, less administrative costs as provided in Paragraph (2) of Subsection B of this section and funds expended for

statewide initiatives as provided in Paragraph (3) of Subsection B of this section, for grants awarded to entities whose primary jurisdiction is within a judicial district having a population of at least two hundred fifteen thousand but less than five hundred thousand according to the most recent federal decennial census; and

(3) any amount of available money remaining in the fund for grants awarded to entities whose primary jurisdiction is within a judicial district having a population of less than two hundred fifteen thousand according to the most recent federal decennial census.

J. For purposes of Subsection I of this section, if applicants whose primary jurisdictions are within different judicial districts apply jointly for a grant, the applicants, if awarded a grant, would each receive an award amount based on that individual applicant's judicial district.

K. The committee shall develop grant criteria to guide its determination for the awarding of a grant, and the criteria shall:

(1) take into consideration an applicant's attorney vacancy rate;

(2) take into consideration an applicant's attorney caseload;

(3) take into consideration cost of living and comparable market compensation for an applicant's locality;

(4) take into consideration crime rates in an applicant's locality;

(5) take into consideration the number of attorneys employed by an applicant;

(6) prioritize, in its consideration, an applicant's proposal for initiatives that target the recruitment of candidates who are law school students, attorneys who are not currently employed or contracted by the state or attorneys who are not currently employed in New Mexico;

(7) prioritize, in its consideration, an applicant's proposal for initiatives that include collaboration among public defender offices, district attorney offices and other criminal justice entities; and

(8) prioritize, in its consideration, an applicant's proposal for initiatives that will take place within a judicial district having existing pre-prosecution diversion programs or a plan to implement those programs within two fiscal years.

L. A grantee may use a grant award to:

(1) provide a recruitment differential disbursement to newly hired attorneys, including a recruitment differential disbursement for relocation expenses; provided that

the attorney remains employed as an attorney with that same agency for one additional year;

(2) provide a retention differential disbursement to attorneys already employed by the applicant; provided that the attorney remains employed as an attorney with that same agency for one additional year;

(3) implement professional development initiatives designed to recruit, train and retain attorneys; and

(4) implement campaigns to recruit in-state and out-of-state candidates.

M. A grantee shall not use a grant:

(1) for recurring initiatives, except the grantee may use a grant for a recurring initiative if the grantee has provided a plan to replace nonrecurring funds with recurring funds to fund that initiative;

(2) to create new attorney positions or fund the base salary of existing attorney positions; or

(3) to contract with private attorneys for prosecution or defense services, except if the initiative is focused on increasing the number or capacity of private attorneys available to provide prosecution or defense services in a county or judicial district.

N. A grantee shall provide to the committee within ninety days of receiving a grant, and then every ninety days thereafter until the earliest of either the completion of the grantee's initiative or all funds are expended, a report of the grantee's expenditures for the grantee's initiative. Any unexpended money remaining after the completion of the grantee's initiative shall revert to the fund within sixty days of completion of the initiative.

O. The committee shall provide at least one annual report by November 1 of each fiscal year to the department of finance and administration and the legislative finance committee that contains:

(1) applicant information, including information about the applicant agency, the grant amount requested and the title and description of the applicant's proposed initiative;

(2) individual grantee information, including information about the grantee's judicial district location, the grant amount awarded and the title and description of the grantee's initiative;

(3) data collected and evaluations made by the department of finance and administration about the efficacy of the initiatives of prior award recipients; and

(4) the status of any ongoing workload studies and the results of any workload studies completed since the time of the prior report.

P. As used in this section:

(1) "committee" means the public attorney workforce capacity building fund committee; and

(2) "fund" means the public attorney workforce capacity building fund.

History: 1978 Comp., § 9-6-18, enacted by Laws 2023, ch. 188, § 2.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

9-6-19. Detention and corrections workforce capacity building fund; detention and corrections workforce capacity building fund committee; administration; distribution of funds; grant criteria.

A. The "detention and corrections workforce capacity building fund" is created in the state treasury to support efforts to increase the available workforce of detention officers, including initiatives to recruit and retain high-quality detention officers. The fund consists of appropriations, gifts, grants and donations. Money in the fund is subject to appropriation by the legislature. Any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year shall revert to the general fund unless an appropriation provides a different period for expenditure.

B. The department of finance and administration shall administer the fund to:

(1) provide grant disbursements pursuant to Subsection J of this section; and

(2) fund administrative costs necessary to carry out the provisions of this section, including such administrative costs that are necessary to evaluate the efficacy of initiatives implemented by grantees to increase the available workforce of detention officers and such administrative costs that are determined, in consultation with the committee, to be necessary to conduct workload studies, including studies of retention and hiring challenges, the results of which shall be used by the committee to improve the structure and criteria of the provisions of this section and to develop recommendations from the committee for policy or program measures to be considered by the legislature; provided that the amount expended for administrative costs shall not exceed three percent of the total appropriations to the fund.

C. Disbursements from the fund shall be made on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the chair of the committee.

D. The "detention and corrections workforce capacity building fund committee" is created and is administratively attached to the department of finance and administration. The committee consists of the following four voting members:

(1) one member who is employed by the corrections department, to be appointed by the secretary of corrections;

(2) one member who is employed by a local jail in the state, to be appointed by the New Mexico association of counties;

(3) one member who is the county manager of a county government in the state that operates a local jail, to be appointed by the New Mexico association of counties; and

(4) one member who is employed by the department of finance and administration, to be appointed by the secretary of finance and administration.

E. The committee shall elect a chair from among its membership.

F. The committee shall:

(1) conduct meetings once per year or more often as necessary to carry out its duties at the times and locations that the committee designates;

(2) develop criteria for the awarding of grants as provided in Subsection N of this section;

(3) periodically review the award criteria and recommend any amendments to the criteria based on the results of any workload studies or evaluations of grantee initiatives;

(4) award grants to detention facilities as provided in Subsections J through M of this section;

(5) collect information about initiative expenditures from grantees as provided in Subsection Q of this section;

(6) report applicant and grantee information as provided in Subsection R of this section; and

(7) disseminate information regarding the program and application process to all eligible entities.

G. A majority of the members of the committee constitutes a quorum for the transaction of business.

H. A member of the committee shall not review or vote on a proposal made by an applicant with whom the member is employed.

I. Administrative and other necessary support shall be provided to the committee by the department of finance and administration.

J. The committee may allocate:

(1) up to twenty-eight percent of the money in the fund, less administrative costs as provided in Paragraph (2) of Subsection B of this section, for grants awarded to entities located within a county with a population of at least five hundred thousand according to the most recent federal decennial census; and

(2) any amount of available money remaining in the fund for grants awarded to entities located within a county with a population of less than five hundred thousand according to the most recent federal decennial census.

K. For purposes of Subsection J of this section, if applicants located within different counties apply jointly for a grant, the applicants, if awarded a grant, would each receive an award amount based on that individual applicant's county.

L. Any local jail is eligible to apply for a grant; provided that the local jail is in compliance with applicable statutory reporting requirements, including those described in Sections 33-3-4 and 33-16-5 NMSA 1978.

M. The corrections department and all of its corrections facilities are eligible to apply for a grant; provided that:

(1) the application for a grant proposes to undertake initiatives in collaboration with a local jail;

(2) the corrections department is in compliance with applicable statutory reporting requirements, including those described in Subsection F of Section 31-20-2 NMSA 1978, Subsection C of Section 33-15-3 NMSA 1978 and Sections 9-3-9, 33-9-10 and 33-16-5 NMSA 1978, and all reporting requirements for appropriations that have not been fully expended by the department and have not reverted to the general fund or any other fund; and

(3) for purposes of Subsection J of this section, the primary jurisdiction of the corrections department or corrections facility shall be based on the primary jurisdiction of the local jail with which the department or the corrections facility has proposed to collaborate.

N. The committee shall develop grant criteria to guide its determination for the awarding of a grant, and the criteria shall:

(1) take into consideration an applicant's detention officer vacancy rate;

(2) take into consideration cost of living and comparable market compensation for an applicant's locality;

(3) take into consideration an applicant's average daily inmate population over the most recent fiscal year;

(4) take into consideration the ratio of an applicant's number of employed detention officers to the average daily inmate population over the most recent fiscal year;

(5) prioritize, in its consideration, an applicant's proposal for initiatives that target the recruitment of candidates who are experienced detention officers not currently employed by a local jail within the state or the corrections department;

(6) prioritize, in its consideration, an applicant's proposal for initiatives to be undertaken in collaboration between local jails and between one or more local jails and the corrections department; and

(7) prioritize, in its consideration, an applicant that provides detention services to two or more counties.

O. A grantee may use a grant award to:

(1) provide a recruitment differential disbursement to newly hired detention officers, including a recruitment differential disbursement for relocation expenses; provided that the detention officer remains employed as a detention officer with that same local jail or the corrections department for one additional year;

(2) provide a retention differential disbursement to detention officers already employed by the applicant for the purpose of retention; provided that the detention officer remains employed as a detention officer with that same local jail or the corrections department for one additional year;

(3) implement professional development initiatives designed to recruit, train and retain detention officers, including tuition reimbursement and developing and conducting a core training academy for detention officers employed by local jails in collaboration with the corrections department or the department of public safety; and

(4) implement campaigns to recruit in-state and out-of-state candidates.

P. A grantee shall not use a grant:

(1) for recurring initiatives, except the grantee may use a grant for a recurring initiative if the grantee has provided a plan to replace nonrecurring funds with recurring funds to fund that initiative; or

(2) to create new detention officer positions or fund the base salary of existing detention officer positions.

Q. A grantee shall provide to the committee within ninety days of receiving a grant, and then every ninety days thereafter until the earliest of either the completion of the grantee's initiative or all funds are expended, a report of the grantee's expenditures for the grantee's initiative. Any unexpended money remaining after the completion of the grantee's initiative shall revert to the fund within sixty days of completion of the initiative.

R. The committee shall provide at least one annual report by November 1 of each fiscal year to the department of finance and administration and the legislative finance committee that contains:

(1) applicant information, including information about the applicant detention facility, the grant amount requested and the title and description of the applicant's proposed initiative;

(2) individual grantee information, including information about the grantee's detention facility, the grant amount awarded and the title and description of the grantee's initiative;

(3) data collected and evaluations made by the department of finance and administration about the efficacy of the initiatives of prior award recipients; and

(4) the status of any ongoing workload studies and the results of any workload studies completed since the time of the prior report.

S. As used in this section:

(1) "committee" means the detention and corrections workforce capacity building fund committee;

(2) "corrections facility" means any facility or program controlled or operated by the state or any of its agencies or departments and supported wholly or in part by state funds for the correctional care of persons, including the penitentiary of New Mexico, which consists of the penitentiary of Santa Fe and other places in the state designated by the secretary of corrections, but not including a facility operated by a private independent contractor pursuant to an agreement with the corrections department;

(3) "detention facility" means a local jail or corrections facility;

(4) "detention officer" means any employee of the corrections department or a local jail who has inmate custodial responsibilities;

(5) "fund" means the detention and corrections workforce capacity building fund; and

(6) "local jail" means a facility operated by a county, municipality or combination of such local governments and used for the confinement of persons charged with or convicted of a violation of a law or ordinance, but does not include a facility operated by a private independent contractor pursuant to an agreement with a county, municipality or combination of such local governments.

History: 1978 Comp., § 9-6-19, enacted by Laws 2023, ch. 188, § 3.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

9-6-20. New Mexico match fund; created; reporting.

A. The "New Mexico match fund" is created as a nonreverting fund in the state treasury. The fund consists of distributions, appropriations, gifts, grants and donations.

B. The department shall administer the fund, and money in the fund is appropriated to the department for the purposes of the fund. The department may use money in the fund to:

(1) make grants to an eligible entity:

(a) for state matching funds for federal grants; and

(b) to offset higher project costs incurred to comply with federal requirements;

(2) make grants to an eligible entity that receives a grant pursuant to Subparagraph (a) of Paragraph (1) of this subsection to administer that grant; provided that a grant awarded pursuant to this paragraph shall not exceed five percent of the combined total amount of the federal grant and state matching funds awarded to the eligible entity; and

(3) administer the fund; provided that the department shall use no more than three percent of the appropriation amounts received in the fund for the administration of the fund.

C. An eligible entity shall request the full amount of the state matching funds required by the federal grant.

D. A grant for state matching funds made pursuant to this section shall be contingent on the award of the federal grant for which the state matching funds are sought.

E. An eligible entity that requests funding to offset higher project costs incurred to comply with federal requirements shall submit proof to the department of project cost estimates with and without federal compliance.

F. Money in the fund shall only be expended upon review and approval of the department.

G. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary or the secretary's authorized representative.

H. The department shall report annually to the legislative finance committee and any other appropriate interim committee no later than October 1 of each year on grants made from the fund.

I. As used in this section:

(1) "department" means the department of finance and administration; and

(2) "eligible entity" means a county, city, town or village; a drainage, conservancy, irrigation, soil and water conservation, water or sanitation district; a mutual domestic water consumers association; a public water cooperative association; a community ditch association; a public post-secondary educational institution; the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions; any other political subdivision of the state; or a federally recognized Indian nation, tribe or pueblo, the boundaries of which are located wholly or partially in New Mexico.

History: Laws 2024, ch. 7, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2024, ch. 7, § 2 contained an emergency clause and was approved February 28, 2024.

ARTICLE 7
Department of Health

9-7-1. Short title.

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

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

ANNOTATIONS

Cross references. — For provisions regarding the office of guardianship of the developmental disabilities planning council, *see* 28-16B-1 NMSA 1978 et seq.

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

9-7-2. Definitions.

As used in the Department of Health Act:

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

B. "secretary" means the secretary of health.

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

ANNOTATIONS

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

9-7-3. Purpose.

The purpose of the Department of Health Act is to establish a single, unified department to administer the laws and exercise the functions relating to health formerly administered and exercised by various organizational units of state government, including the state health agency, the scientific laboratory system and an appropriate allocation of administrative support services of the health and social services department and the hospital and institutions department. All public health and scientific laboratory functions formerly performed by the health and environment department shall be performed by the department. Behavioral health services, including mental health and substance abuse services, provided by or through the department shall be subject to the direction of the secretary and the provisions of Section 9-7-6.4 NMSA 1978.

History: 1978 Comp., § 9-7-3, enacted by Laws 1977, ch. 253, § 3; 1991, ch. 25, § 15; 2004, ch. 46, § 5.

ANNOTATIONS

The 2004 amendment, effective May 19, 2004, added the last sentence.

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

9-7-4. Department established.

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

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

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

D. The information technology division shall have all those powers and duties conferred upon it by the secretary with the consent of the governor.

History: 1978 Comp., § 9-7-4, enacted by Laws 1991, ch. 25, § 16; 2005, ch. 110, § 3; 2007, ch. 325, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1991, ch. 25, § 16 repealed former Section 9-7-4 NMSA 1978, as enacted by Laws 1977, ch. 253, § 4, relating to establishment of the health and environment department, and enacted a new section, effective March 29, 1991.

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

For the department of environment, *see* 9-7A-1 NMSA 1978 et seq.

For health and hospital records, *see* 14-6-1 to 14-6-3 NMSA 1978.

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

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

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

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

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

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

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

For food generally, *see* Chapter 25 NMSA 1978.

For controlled substances, *see* 30-31-1 to 30-31-41 NMSA 1978.

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

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

The 2007 amendment, effective June 15, 2007, eliminated the behavioral health services division of the department of health.

Laws 2007, ch. 325, § 13 transferred personnel, property contracts and references in law from the behavioral health services division of the department of health and the department of human services.

The 2005 amendment, effective June 17, 2005, deleted the provision in Subsection B that "health services division" refers to "public health division"; deleted the requirement in Subsection C that the administrative services division provide support to the department of environment; and provided in Subsection D that the information technology division shall have all powers and duties conferred upon it by the secretary of health with the consent of the governor.

9-7-4.1. State health improvement plan.

A. The department shall develop a state health improvement plan that meets accreditation standards of the public health accreditation board or its successor in interest.

B. The department shall conduct state health assessments in order to inform the development, adoption and implementation of the state health improvement plan.

C. The department shall publish the state health improvement plan on September 1, 2018 and at least every five years thereafter. By September 1 of each even-numbered year, the department shall review and update or amend the plan in response to changes and developments.

D. The department shall include the legislature and other agencies and commissions as the department deems necessary in its development of the state health improvement plan so as to give geographic representation to all areas of the state. The department shall ensure that public participation and public input are integrated into the planning process. The department shall convene regional meetings on the proposed plan to allow public review and comment, including oral and written testimony, pursuant to the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

E. The department shall consult with the governments of Native American nations, tribes and pueblos located wholly or partially within New Mexico in the development of the state health improvement plan.

History: Laws 2004, ch. 51, § 1; 2007, ch. 46, § 6; 2007, ch. 279, § 1; 2017, ch. 87, § 1.

ANNOTATIONS

The 2017 amendment, effective June, 16, 2017, required the department of health, at least every five years, to develop a state health improvement plan based on state health assessments and with assistance from the legislature and other agencies and commissions deemed necessary by the department; replaced the catchline; in Subsection A, after "the department", deleted "in conjunction with the New Mexico health policy commission and other state agencies, pursuant to Section 9-7-11.1 NMSA 1978", after "shall develop a", deleted "comprehensive strategic plan for" and added "state", after "health", added "improvement plan", and deleted "emphasizes prevention, personal responsibility, access and quality" and added "meets accreditation standards of the public health accreditation board or its successor in interest"; added a new Subsection B and redesignated former Subsections B through D as Subsections C through E, respectively; in Subsection C, after "shall publish the", deleted "comprehensive strategic" and added "state health improvement", after "plan", deleted "for health by September 1, 2008" and added "on September 1, 2018", after the next "and", added "at least", and after "every", deleted "four" and added "five"; in Subsection D, after "legislature", deleted "health care providers, consumer and patient advocates, health care financing organizations, managed care organizations, major insurers in the state, the human services department, the children, youth and families department, the aging and long-term services department, pharmaceutical manufacturers and other stakeholders" and added "and other agencies and commissions as the department deems necessary", after "development of the", deleted "comprehensive strategic" and added "state health improvement", and after "plan", deleted "for health"; in Subsection E, after "governments of", deleted "Indian" and added "Native American", after "New Mexico", deleted "to include Indian nations, tribes and pueblos", after "development of the", deleted "comprehensive strategic" and added "state health improvement", and

after "plan", deleted "for health"; and deleted former Subsection E, which related to the department of health's findings, recommendations and goals related to the department of health's former comprehensive strategic plan.

2007 Amendments. — Laws 2007, ch. 279, § 1, effective June 15, 2007, changed the deadline for publication of the comprehensive strategic plan from September 1, 2004 to September 1, 2008 and every four years thereafter and required the department to update the plan by September 1 of each even year.

Laws 2007, 46, § 6, effective June 15, 2007, in Subsection C, changed "state agency on aging" to the "aging and long-term services department" and made other non-substantive language changes.

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

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

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

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

ANNOTATIONS

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

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

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

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

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

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

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

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

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

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

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for which administration or execution the secretary 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) conduct quality assurance and quality improvement activities, which may include participation in a nationally recognized accreditation program for public health agencies that is based on the ability of an agency to provide essential public health services and functions;

(8) 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;

(9) prepare an annual budget of the department;

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978]. 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 those bonds; and

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

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

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

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

(2) the secretary shall provide educational programs, in accordance with the special education rules of the public education department, for school-age persons who are clients of institutions under the secretary's 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 paragraph.

E. The secretary may make and adopt such reasonable procedural rules as may be necessary to carry out the duties of the department and its divisions. No rule 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 rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, 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 rule or proposed amendment or repeal of an existing rule 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 shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: 1978 Comp., § 9-7-6, enacted by Laws 1977, ch. 253, § 7; 1978, ch. 211, § 5; 1991, ch. 25, § 18; 2001, ch. 119, § 1; 2017, ch. 87, § 2.

ANNOTATIONS

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

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

For state budgets, *see* 6-3-1 to 6-3-25 NMSA 1978.

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

The 2017 amendment, effective June, 16, 2017, provided that the secretary of health's quality assurance and quality improvement activities may include participation in a nationally recognized accreditation program for public health agencies, and made technical changes; replaced "he" or "his" with "the secretary" or "the secretary's" throughout the section; in Subsection B, Paragraph B(1), after "personnel laws and", deleted "regulations" and added "rules", and in Paragraph B(7), after "quality improvement activities", added the remainder of the paragraph; in Subsection C, after "including", deleted "but not limited to"; and in Subsection D, Paragraph D(1), after "notify the", deleted "superintendent of public instruction" and added "secretary of public education", and in Paragraph D(2), after "rules of the", deleted "state board of" and added "public", and after "education", added "department".

The 2001 amendment, effective June 15, 2001, inserted Paragraph B(7) and renumbered the remaining paragraphs accordingly; substituted "rule" for "regulation" and "rules" for "rules and regulations" throughout the section.

The 1991 amendment, effective March 29, 1991, substituted "the Department of Health Act" for "this act" in Paragraph (1) of Subsection B; deleted former Subsection D, which read "Where functions of departments overlap or a function assigned to one department could be better performed by another department, a secretary may recommend appropriate legislation to the next session of the legislation for its approval"; redesignated former Subsections E and F as present Subsections D and E; substituted "22-1-2 NMSA 1978" for "77-1-2 NMSA 1953" and "43-1-3 NMSA 1978" for "34-2A-2 NMSA 1953" in the introductory paragraph of Subsection D; in Paragraph (1) of Subsection D, substituted "Department of Health Education Act" for "Health and Environment Department Act" in the first sentence and deleted "state" preceding "superintendent" in the second sentence; and made stylistic changes throughout Subsection B.

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

As sections not in conflict with Personnel Act in defining exempt positions. — In defining exempt positions only for the secretary and division heads of the department, Section 9-1-4 NMSA 1978 and Subsection B(9) (now Subsection B(10)) of this section are not in conflict with the Personnel Act, nor are they controlling with respect to the number of exempt positions authorized for the department. 1980 Op. Att'y Gen. No. 80-38.

No responsibility by state records center to determine compliance of promulgated rules with hearing and notice requirements. 1978 Op. Att'y Gen. No. 78-07.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 39 Am. Jur. 2d Health §§ 1, 3, 4, 9 to 16.

9-7-6.1. Repealed.

History: Laws 1999, ch. 270, § 1; 2004, ch. 46, § 6; repealed by Laws 2007, ch. 325, § 14.

ANNOTATIONS

Repeals. — Laws 2007, ch. 325, § 14 repealed 9-7-6.1 NMSA 1978, as enacted by Laws 1999, ch. 270, § 1, relating to behavioral health services, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-7-6.2. Repealed.

History: Laws 1999, ch. 270, § 2; 2004, ch. 46, § 7; repealed by Laws 2007, ch. 325, § 14.

ANNOTATIONS

Repeals. — Laws 2007, ch. 325, § 14 repealed 9-7-6.2 NMSA 1978, as enacted by Laws 1999, ch. 270, § 2, relating to contract eligibility, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-7-6.3. Rules.

The department of health shall adopt rules pursuant to the State Rules Act [Chapter 14, Article 4 NMSA 1978] and the Department of Health Act to implement the provision of behavioral health services.

History: Laws 1999, ch. 270, § 3.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 270, § 11 made Laws 1999, ch. 270, § 3 effective July 1, 1999.

9-7-6.4. Interagency behavioral health purchasing collaborative.

A. The "interagency behavioral health purchasing collaborative" is created, consisting of the secretaries of aging and long-term services; Indian affairs; human services; health; corrections; children, youth and families; early childhood education and care; finance and administration; workforce solutions; public education; and transportation; the directors of the administrative office of the courts; the New Mexico mortgage finance authority; the governor's commission on disability; the developmental disabilities council; the instructional support and vocational education division of the public education department; and the New Mexico health policy commission; and the governor's health policy coordinator, or their designees. The collaborative shall be chaired by the secretary of human services with the respective secretaries of health and children, youth and families alternating annually as co-chairs.

B. The collaborative shall meet regularly and at the call of either co-chair and shall:

(1) identify behavioral health needs statewide, with an emphasis on that hiatus between needs and services set forth in the department of health's gap analysis and in ongoing needs assessments, and develop a master plan for statewide delivery of services;

(2) give special attention to regional differences, including cultural, rural, frontier, urban and border issues;

(3) inventory all expenditures for behavioral health, including mental health and substance abuse;

(4) plan, design and direct a statewide behavioral health system, ensuring both availability of services and efficient use of all behavioral health funding, taking into consideration funding appropriated to specific affected departments; and

(5) contract for operation of one or more behavioral health entities to ensure availability of services throughout the state.

C. The plan for delivery of behavioral health services shall include specific service plans to address the needs of infants, children, adolescents, adults and seniors, as well as to address workforce development and retention and quality improvement issues. The plan shall be revised every two years and shall be adopted by the department of health as part of the statewide health plan.

D. The plan shall take the following principles into consideration, to the extent practicable and within available resources:

(1) services should be individually centered and family-focused based on principles of individual capacity for recovery and resiliency;

(2) services should be delivered in a culturally responsive manner in a home- or community-based setting, where possible;

(3) services should be delivered in the least restrictive and most appropriate manner;

(4) individualized service planning and case management should take into consideration individual and family circumstances, abilities and strengths and be accomplished in consultation with appropriate family, caregivers and other persons critical to the individual's life and well-being;

(5) services should be coordinated, accessible, accountable and of high quality;

(6) services should be directed by the individual or family served to the extent possible;

(7) services may be consumer- or family-provided, as defined by the collaborative;

(8) services should include behavioral health promotion, prevention, early intervention, treatment and community support; and

(9) services should consider regional differences, including cultural, rural, frontier, urban and border issues.

E. The collaborative shall seek and consider suggestions of Native American representatives from Indian nations, tribes and pueblos and the urban Indian population, located wholly or partially within New Mexico, in the development of the plan for delivery of behavioral health services.

F. Pursuant to the State Rules Act [Chapter 14, Article 4 NMSA 1978], the collaborative shall adopt rules through the human services department [health care authority department] for:

(1) standards of delivery for behavioral health services provided through contracted behavioral health entities, including:

(a) quality management and improvement;

(b) performance measures;

(c) accessibility and availability of services;

(d) utilization management;

(e) credentialing of providers;

(f) rights and responsibilities of consumers and providers;

(g) clinical evaluation and treatment and supporting documentation; and

(h) confidentiality of consumer records; and

(2) approval of contracts and contract amendments by the collaborative, including public notice of the proposed final contract.

G. The collaborative shall, through the human services department [health care authority department], submit a separately identifiable consolidated behavioral health budget request. The consolidated behavioral health budget request shall account for requested funding for the behavioral health services program at the human services department [health care authority department] and any other requested funding for behavioral health services from agencies identified in Subsection A of this section that will be used pursuant to Paragraph (5) of Subsection B of this section. Any contract proposed, negotiated or entered into by the collaborative is subject to the provisions of the Procurement Code.

H. The collaborative shall, with the consent of the governor, appoint a "director of the collaborative". The director is responsible for the coordination of day-to-day activities of the collaborative, including the coordination of staff from the collaborative member agencies.

I. The collaborative shall provide a quarterly report to the legislative finance committee on performance outcome measures. The collaborative shall submit an annual report to the legislative finance committee and the interim legislative health and human services committee that provides information on:

(1) the collaborative's progress toward achieving its strategic plans and goals;

(2) the collaborative's performance information, including contractors and providers; and

(3) the number of people receiving services, the most frequently treated diagnoses, expenditures by type of service and other aggregate claims data relating to services rendered and program operations.

History: Laws 2004, ch. 46, § 8; 2008, ch. 69, § 1; 2022, ch. 30, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

The 2022 amendment, effective July 1, 2022, added the secretary of early childhood education and care department to the interagency behavioral health purchasing collaborative; and in Subsection A, after "children, youth and families", added "early childhood education and care", after "the developmental disabilities", deleted "planning", and after "instructional support and vocational", deleted "rehabilitation" and added "education".

The 2008 amendment, effective May 14, 2008, added Subsections F through I.

9-7-6.5. Agreements for a replacement facility for Fort Bayard medical center.

A. Notwithstanding any other provision of state law or rule, the secretary may do one or more of the following:

(1) enter into an agreement, including an agreement with an independent contractor, to operate Fort Bayard medical center or a replacement for Fort Bayard medical center in Grant county;

(2) acquire by purchase, lease, construction, lease purchase or other financing arrangement a facility to be located in Grant county to replace Fort Bayard medical center, provided that, if the acquisition results in the transfer of the title to the facility, the title to the facility shall be in the name of the facilities management division of the general services department; or

(3) enter into an agreement with Grant county under which the department may construct or cause to be constructed the facility that will replace the Fort Bayard medical center.

B. The provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978] shall not apply to the procurement, by either the department or Grant county or both, of tangible personal property, services or construction deemed necessary by the department to effectuate the provisions of this section. However, agreements related to the acquisition of the facility to replace Fort Bayard medical center shall be subject to the provisions of state law regulating the acquisition and disposal of real property by governmental entities.

C. An operating agreement entered into pursuant to this section shall include provisions for the continued employment of all current and future Fort Bayard medical center employees, excluding management employees of the contractor, as state employees, entitled and subject to all the rights and responsibilities of state employees. Under the terms of the agreement and the overall direction of the department, the independent contractor shall provide management and supervision to state employees at Fort Bayard medical center, including the provision of work assignments, evaluations and promotional and disciplinary actions.

D. Pursuant to Section 15-3-35 NMSA 1978, the legislature ratifies and approves a lease-purchase agreement, in a form approved by the state board of finance, between the department, as lessee-purchaser and Grant county, as lessor-seller, for the facility that will replace the Fort Bayard medical center, provided that, upon transfer of title, title to the facility shall be in the name of the facilities management division of the general services department.

History: Laws 2005, ch. 317, § 1; 2008, ch. 4, § 1; 2008, ch. 70, § 1; 2013, ch. 115, § 6.

ANNOTATIONS

Cross references. — For Fort Bayard jurisdiction, *see* 19-2-6 NMSA 1978.

The 2013 amendment, effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; and in Paragraph (2) of Subsection A and in Subsection D, deleted "property control" and added "facilities management" before the word "division".

The 2008 amendment, effective February 29, 2008, authorized the state to replace the Fort Bayard medical center facility; exempted the procurement of tangible personal property, services or construction to replace the facility from the application of the Procurement Code; provided that the replacement of the facility shall be subject to state law regulating the acquisition and disposal of real property by governmental agencies; and added Subsection D.

9-7-6.6. Gambling addiction data collection.

A. The department of health shall begin an ongoing process of gathering data on gambling addiction in New Mexico. The department shall establish standards to determine what constitutes a compulsive or problem gambler and collect data on the percent of the population who are active gamblers or compulsive gamblers and the number of gamblers who seek treatment.

B. The department of health shall adopt rules requiring that all suicide deaths or attempted suicides identified by law enforcement agencies or medical personnel be investigated to determine if the victim had gambling debts or compulsive gambling

behaviors that may have been a factor in the cause of the suicide or the attempted suicide.

C. The department of health shall coordinate with the bankruptcy court in New Mexico to obtain data on compulsive gambling behavior or gambling debt that is found by the court to be a factor in all bankruptcies filed in New Mexico.

D. Beginning in fiscal year 2007, the department shall make reports at five-year intervals to an appropriate legislative interim committee no later than August on its findings regarding gambling addiction and the incidence of suicides and bankruptcies that involve gambling debt or compulsive gambling behavior in New Mexico. Two copies of the gambling report shall be filed with the legislative council service library every five years beginning in August 2007.

History: Laws 2005, ch. 331, § 1.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 331 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

9-7-6.7. Clearinghouse for Native American suicide prevention; culturally based suicide prevention initiatives.

A. In consultation with the Indian affairs department, the interagency behavioral health purchasing collaborative, subject to available funding, shall establish:

(1) a statewide clearinghouse and technical assistance program called the "New Mexico clearinghouse for Native American suicide prevention" to work with the Native American suicide prevention advisory council to provide culturally appropriate suicide prevention, intervention and post-event assistance statewide to Native American individuals, families and tribes, nations and pueblos living with suicide, attempted suicide or the risk of suicide; and

(2) culturally based Native American youth suicide prevention initiatives, each focused on the continuum of prevention, intervention and post-event assistance to Native American individuals, families and tribes, nations and pueblos living with suicide, attempted suicide or the risk of suicide in rural, frontier and urban communities.

B. As used in this section, "Native American" means a member of a federally recognized Indian tribe, nation or pueblo.

History: Laws 2011, ch. 15, § 1; 2013, ch. 7, § 2.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, required the clearinghouse for Native American suicide prevention to work with the Native American suicide prevention advisory council; and in Paragraph (1) of Subsection A, after "clearinghouse for Native American suicide prevention to", added "work with the Native American suicide prevention advisory council to".

9-7-7. Organizational units of department; powers and duties specified by law; access to information.

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, and he shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 9-7-6 NMSA 1978. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law.

History: 1978 Comp., § 9-7-7, enacted by Laws 1977, ch. 253, § 8; 1991, ch. 25, § 19.

ANNOTATIONS

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

For the department of environment, *see* 9-7A-1 NMSA 1978 et seq.

For health and hospital records, *see* 14-6-1 to 14-6-3 NMSA 1978.

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

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

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

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

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

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

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

For food generally, *see* Chapter 25 NMSA 1978.

For controlled substances, *see* 30-31-1 to 30-31-41 NMSA 1978.

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

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

The 1991 amendment, effective March 29, 1991, substituted "9-7-6 NMSA 1978" for "7 of the Health and Environment Department Act" at the end of the second sentence.

9-7-8. Directors.

The secretary shall appoint with the approval of the governor "directors" of divisions established within the department. The positions so appointed are exempt from the Personnel Act [Chapter 10, Article 9 NMSA 1978].

History: 1978 Comp., § 9-7-8, enacted by Laws 1977, ch. 253, § 9; 1991, ch. 25, § 20.

ANNOTATIONS

Cross references. — For appointment of directors, *see* 9-7-6B(10) NMSA 1978.

The 1991 amendment, effective March 29, 1991, substituted "divisions established" for "such divisions as are established" in the first sentence.

9-7-9. Bureaus; chiefs.

The secretary shall establish within each division such "bureaus" as he deems necessary to carry out the provisions of the Department of Health Act. He shall employ a "chief" to be the administrative head of each bureau. The chief and all subsidiary employees of the department shall be covered by the Personnel Act [Chapter 10, Article 9 NMSA 1978] unless otherwise provided by law.

History: 1978 Comp., § 9-7-9, enacted by Laws 1977, ch. 253, § 10; 1991, ch. 25, § 21.

ANNOTATIONS

The 1991 amendment, effective March 29, 1991, substituted "Department of Health Act" for "Health and Environment Department Act" at the end of the first sentence and made a minor stylistic change in the second sentence.

9-7-9.1. Department of health; office of oral health; director.

The secretary shall appoint a director of the department's office of oral health, who shall be a dental health care professional licensed pursuant to the Dental Health Care Act [Chapter 61, Article 5A NMSA 1978].

History: Laws 2019, ch. 107, § 13.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 107, § 19 made Laws 2019, ch. 107, § 13 effective June 14, 2020.

Temporary provisions. — Laws 2019, ch. 107, § 17 provided that the department of health shall conduct an outcome report on the first five years of dental therapy practice in the state pursuant to this 2019 act. At a date five years following the date of the first issuance of a license to practice dental therapy in the state, the department of health shall consult with the New Mexico board of dental health care, the New Mexico dental hygienists' association and the New Mexico dental association to compile and issue a report to the legislative health and human services committee of the department's findings and recommendations regarding dental therapy, including:

A. its efficacy, effectiveness and cost;

B. its impact on access to dental health care;

C. the distribution of dental therapists statewide;

D. demographic representation among dental therapists;

E. issues related to supervision of dental therapists and their scope of practice;

F. evaluation of services delivered under indirect supervision; and

G. evaluation of services delivered under general supervision for recommendation to indirect supervision.

9-7-10. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 328, § 2 repealed 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.

9-7-10.1. Rehabilitation centers.

There are created within the department of health the "northern New Mexico rehabilitation center" and the "southern New Mexico rehabilitation center". The centers shall be at Las Vegas and Roswell, respectively, and shall provide the citizens of New Mexico with physical therapy, speech and hearing diagnoses and therapy and family counseling services in conjunction with such therapy and in cooperation with related

programs of other governmental and nonprofit entities. Such therapy and service shall be provided without regard to eligibility for federally funded vocational rehabilitation services.

History: 1978 Comp., § 9-7-10.1, enacted by Laws 1983, ch. 156, § 1; 1987, ch. 328, § 1; 1991, ch. 25, § 22.

ANNOTATIONS

The 1991 amendment, effective March 29, 1991, substituted "department of health" for "health and environment department" in the first sentence.

9-7-11. Advisory committees.

A. Advisory committees may be created. Advisory means furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or to comply with federal or private funding requirements and does not extend to administering a program or function or setting policy unless specified by law. Advisory committees shall be appointed in accordance with the provisions of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978].

B. All members of advisory committees appointed under the authority of this section shall receive as their sole remuneration for services as a member those amounts authorized under the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: 1978 Comp., § 9-7-11, enacted by Laws 1977, ch. 253, § 12; 1991, ch. 25, § 23.

ANNOTATIONS

The 1991 amendment, effective March 29, 1991, made minor stylistic changes throughout Subsection A.

9-7-11.1. Findings and purpose.

A. The legislature finds that good health is among our most cherished desires. To achieve optimal health requires both individual and collective responsibility and action, and therefore, state government must assume a leadership role by establishing and implementing policies in all aspects of health. In order to fulfill its proper leadership obligation within public resource constraints, the state must perform a variety of carefully tailored roles in concert with individuals, the private sector and local, federal and tribal governments.

B. The legislature also finds that health care requires a growing portion of the state's public and private resources and impacts a broad segment of the state's economy; a

need, therefore, exists to establish an entity for research, guidance and recommendations on health policy and planning issues.

C. The purpose of the New Mexico health policy commission is to provide a forum for the discussion of complex and controversial health policy and planning issues and for the creative exploration of ideas, issues and problems surrounding health policy and planning, including the interrelations with education, the environment and economic well-being.

D. It is the policy of the state of New Mexico to promote optimal health; to prevent disease, disability and premature death; to improve the quality of life; and to assure that basic health services are available, accessible, acceptable and culturally appropriate, regardless of financial status. This policy shall be realized through the following organized efforts:

(1) education, motivation and support of the individual in healthy behavior;

(2) protection and improvement of the physical and social environments;

(3) promotion of health services for early diagnosis and prevention of disease and disability; and

(4) provisions of basic treatment services needed by all New Mexicans.

History: Laws 1991, ch. 139, § 1.

ANNOTATIONS

Effective dates. — Laws 1991, ch. 139 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 1991, 90 days after the adjournment of the legislature.

9-7-11.2. New Mexico health policy commission created; composition; duties.

A. There is created the "New Mexico health policy commission", which is administratively attached to the department of finance and administration.

B. The New Mexico health policy commission shall consist of nine members appointed by the governor with the advice and consent of the senate to reflect the ethnic, economic, geographic and professional diversity of the state. A majority of the commission members shall have no pecuniary or fiduciary interest in the health services industry while serving or for three years preceding appointment to the commission. Three members shall be appointed for one-year terms, three members shall be appointed for two-year terms, three members shall be appointed for three-year terms and all subsequent appointments shall be made for three-year terms.

C. The New Mexico health policy commission shall meet at the call of the chair and shall meet not less than quarterly. The chair shall be elected from among the members of the commission. Members of the New Mexico health policy commission shall not be paid but shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

D. The New Mexico health policy commission shall establish task forces as needed to make recommendations to the commission on various health issues. Task force members may include individuals who have expertise or a pecuniary or fiduciary interest in the health services industry. Voting members of a task force may receive mileage expenses if they:

(1) are members who represent consumer interests;

(2) are individuals who were not appointed to represent the views of the organization or agency for which they work; or

(3) represent an organization that has a policy of not reimbursing travel expenses of employees or representatives for travel to meetings.

E. The New Mexico health policy commission shall:

(1) develop a plan for and monitor the implementation of the state's health policy;

(2) obtain and evaluate information from a broad spectrum of New Mexico's society to develop and monitor the implementation of the state's health policy;

(3) obtain and evaluate information relating to factors that affect the availability and accessibility of health services and health care personnel in the public and private sectors;

(4) perform needs assessments on health personnel, health education and recruitment and retention and make recommendations regarding the training, recruitment, placement and retention of health professionals in underserved areas of the state;

(5) prepare and publish an annual report describing the progress in addressing the state's health policy and planning issues. The report shall include a workplan of goals and objectives for addressing the state's health policy and planning issues in the upcoming year;

(6) distribute the annual report to the governor, appropriate state agencies and interim legislative committees and interested parties;

(7) establish a process to prioritize recommendations on program development, resource allocation and proposed legislation;

(8) provide information and analysis on health issues;

(9) serve as a catalyst and synthesizer of health policy in the public and private sectors;

(10) respond to requests by the executive and legislative branches of government; and

(11) ensure that any behavioral health projects, including those relating to mental health and substance abuse, are conducted in compliance with the requirements of Section 9-7-6.4 NMSA 1978.

History: Laws 1991, ch. 139, § 2; 1994, ch. 62, § 17; 2004, ch. 46, § 9; 2005, ch. 72, § 1.

ANNOTATIONS

Cross reference. — For the New Mexico Telehealth and Health Information Technology Commission Act, *see* 24-1G-1 NMSA 1978 et seq.

The 2005 amendment, effective June 17, 2005, increased the number of members on the health policy commission to nine members; provided that a majority of members cannot have a pecuniary or fiduciary interest in the health services industry while serving as a member or three years preceding appointment to the commission and provided that three members shall be appointed for one-year terms.

The 2004 amendment, effective May 19, 2004, added Subsection E(11).

The 1994 amendment, effective March 4, 1994, deleted "health and environment" following "attached to the", and inserted "of finance and administration", in Subsection A; inserted "and shall meet", and deleted "and not more than once a month" following "quarterly", in the first sentence of Subsection C; rewrote Subsection D and inserted Paragraphs D(1) to D(3); substituted "monitor the implementation of" for "implement" in Paragraph E(2); inserted "and health care personnel" and made a minor stylistic change in Paragraph E(3); and rewrote Paragraph E(4), which formerly read: "identify the elements necessary to coordinate an effective system to meet the state's need for health care personnel".

9-7-11.3. Task force created; responsibilities; participants; funding.

A. The "health care providers licensing and credentialing task force" is created under the direction of the New Mexico health policy commission to study and make recommendations for the consolidation and simplification of the health care licensure

processes. The task force shall make recommendations for the establishment of a web site portal for licensure to facilitate and complement or replace the present system conducted by individual health care provider boards and for a central database for credentialing information to simplify and eliminate duplication of effort.

B. The task force shall study and make recommendations to the superintendent of insurance on health care provider credentialing issues and obstacles to one-time efforts by providers to meet all necessary requirements to practice independently or as a provider for any appropriately licensed health care organization or facility. The task force shall study and recommend, if practicable, use of credentialing expertise developed by a statewide association of hospitals.

C. The task force shall include participation by the New Mexico health policy commission; the department of health; the New Mexico medical board; the board of nursing; other health care provider boards; the regulation and licensing department; the office of superintendent of insurance; the human services department [health care authority department]; the office of the attorney general; other affected state agencies; members of the health care industry, including statewide associations and societies representing providers, hospitals and other affected facilities; insurers; other third-party payers; health care advocates; and members of the public.

D. The New Mexico health policy commission, together with the New Mexico medical board and the board of nursing, shall hire an information technology project manager to work under the commission to design, implement and maintain a web site portal for licensure and a central database for credentialing of health care providers.

History: Laws 2003, ch. 235, § 2; 2013, ch. 74, § 4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

The 2013 amendment, effective March 29, 2013, transferred task force participation from the public regulation commission to the superintendent of insurance; and in Subsection C, after "licensing department; the", added "office of superintendent of" and after "insurance", deleted "division of the public regulation commission".

9-7-11.4. Compulsive gambling council; duties; membership.

A. The "compulsive gambling council" is created. The council is administratively attached to the department pursuant to the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978]. The council consists of the following fifteen members, all of whom shall be appointed by and serve at the pleasure of the governor:

(1) the secretary or the secretary's designee, who shall serve as chair of the council;

(2) a member of the governor's staff;

(3) a member of the gaming control board;

(4) a member of the board of directors of the New Mexico lottery authority;

(5) a member of a fraternal organization that sponsors gambling;

(6) two persons with expertise in the field of compulsive gambling;

(7) two Native American representatives from a tribe or pueblo with gaming operations;

(8) two representatives of the non-Native American gaming industry;

(9) two representatives from the behavioral health profession; and

(10) two representatives from the general public.

B. The council shall meet regularly and at the call of the chair.

C. A majority of the council constitutes a quorum.

D. Council members shall serve voluntarily and shall receive no per diem for their services or travel expenses.

E. The council shall:

(1) develop and implement a New Mexico strategic prevention and treatment of compulsive gambling plan;

(2) recommend to the department compulsive gambling prevention and treatment standards;

(3) collaborate with the appropriate state agencies to link compulsive gambling data collection and referral information to crisis response hotlines or youth and domestic violence initiatives;

(4) collaborate with the department to improve data collection regarding gambling-related suicide, bankruptcies and domestic violence;

(5) collaborate with the department and the aging and long-term services department to educate New Mexico seniors through prevention training and materials regarding the recognition and treatment of compulsive gambling problems; and

(6) develop and recommend to the governor a voluntary self-exclusion program.

F. Beginning in 2008, the council shall submit an annual report to the governor and the appropriate legislative interim committee reporting the key findings and progress on implementation of the New Mexico strategic prevention and treatment of compulsive gambling plan.

G. Two copies of the annual report shall be filed with the legislative council service library annually beginning in August 2008.

History: Laws 2006, ch. 8, § 1.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 8 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

9-7-11.5. Native American suicide prevention advisory council; created; terms; quorum; meetings.

A. There is created a "Native American suicide prevention advisory council". The council shall consist of eleven voting members and shall assist in developing policies, rules and priorities for the New Mexico clearinghouse for Native American suicide prevention.

B. The members of the Native American suicide prevention advisory council shall be appointed as follows:

(1) one member representing the eight northern Indian pueblos appointed by the chair of the eight northern Indian pueblos council, incorporated;

(2) one member representing both the Pueblo of Laguna and the Pueblo of Zuni appointed by the chair of the all Indian pueblo council;

(3) one member representing the all Indian pueblo council appointed by the chair of the all Indian pueblo council;

(4) one member representing the southern pueblos appointed by the chair of the ten southern Indian pueblos council;

(5) one member representing the eastern Navajo Nation appointed by the president of the Navajo Nation;

(6) one member representing the western Navajo Nation appointed by the president of the Navajo Nation;

(7) one member representing the Mescalero Apache Tribe appointed by the president of the Mescalero Apache Tribe;

(8) one member representing the Jicarilla Apache Nation appointed by the president of the Jicarilla Apache Nation;

(9) one member representing the urban Native American population appointed by the president of the national Indian youth council, incorporated; and

(10) two members appointed by the chancellor for health sciences of the university of New Mexico, one member being a member of a federally recognized Indian nation, tribe or pueblo.

C. The council shall elect from among its members a chair, vice chair, secretary and treasurer.

D. The members of the Native American suicide prevention advisory council shall be appointed for overlapping terms of six years each. No more than six of the members shall belong to the same political party. The members first appointed to the council shall determine by lot from among their group four members to serve two-year terms, four members to serve four-year terms and three members to serve six-year terms. If a position on the council becomes vacant for any reason, the successor shall be selected by the original appointing authority in the same manner as the original appointment was made and shall serve for the remainder of the term vacated.

E. A majority of council members shall constitute a quorum to take action as the council. No act of the council is valid unless concurred to by a majority of its members present at a meeting at which a quorum exists.

F. The Native American suicide prevention advisory council shall meet at the call of the chair or at a time requested in a written request to the chair by four members, but not less than twice each calendar year.

History: Laws 2013, ch. 7, § 1.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 7 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

9-7-12. Cooperation with the federal government; authority of secretary; single state agency status.

A. The department is authorized to cooperate with the federal government in the administration of health programs in which financial or other participation by the federal government is authorized or mandated under state or federal laws, regulations, rules or orders. The secretary may enter into agreements with agencies of the federal government to implement health programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor or the secretary may by appropriate order designate the department or any organizational unit of the department as the single state agency for the administration of any health program when such designation is a condition of federal financial or other participation in the program under applicable federal law, regulation, rule or order. Whether or not a federal condition exists, the governor may designate the department or any organizational unit of the department as the single state agency for the administration of any health program. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

History: 1978 Comp., § 9-7-12, enacted by Laws 1977, ch. 253, § 13; 1991, ch. 25, § 24.

ANNOTATIONS

The 1991 amendment, effective March 29, 1991, deleted "and environmental" following "health" in the first sentence in Subsection A and deleted "or environmental" following "health" in the second sentence in Subsection A and in the first and second sentences in Subsection B.

9-7-13. Repealed.

ANNOTATIONS

Repeals. — Laws 1991, ch. 25, § 36 repealed 9-7-13 NMSA 1978, as enacted by Laws 1977, ch. 253, § 76, relating to exemptions of the environmental improvement board from the authority of the secretary of health and environment, effective March 29, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com.*

9-7-14, 9-7-15. Recompiled.

ANNOTATIONS

Recompilations. — In 1991, former 9-7-14 and 9-7-15 NMSA 1978 were recompiled as 9-7A-13 and 9-7A-14 NMSA 1978.

9-7-16. Rate equalization for community-based service contractors.

The department of health shall take all measures reasonably necessary to ensure that any funds appropriated to the developmental disabilities division of the department of health for rate equalization for community contract agencies are used to increase contractor payments to provide equitable rates for community contract agencies based upon the variable cost reimbursement study performed for the department.

History: Laws 1992, ch. 82, § 1.

9-7-17. Substance abuse education fund.

There is created the "substance abuse education fund" which shall be controlled by the agency. All money collected or received under the state laws for the purpose of substance abuse education shall be paid over to the state treasurer to the credit of the substance abuse education fund, and the fund shall not be transferred to another fund. The money in the fund shall be used for the purpose of providing additional funding for substance abuse educational programs in the local school districts. The drug abuse agency, in coordination with the state department of public education and local school boards, shall:

A. develop and provide funds for substance abuse education curricula and materials for the public school system;

B. provide substance abuse educational programs to public school staff, parents and students; and

C. assist local schools in developing student and faculty support and intervention groups.

History: 1978 Comp., § 26-2-4.1, enacted by Laws 1987, ch. 265, § 5; 1989, ch. 324, § 20; 1978 Comp., § 26-2-4.1, recompiled as 1978 Comp., § 9-7-17 by Laws 1999, ch. 270, § 9.

ANNOTATIONS

Recompilations. — Laws 1999, ch. 270, § 9 recompiled former 26-2-4.1 NMSA 1978 as 9-7-17 NMSA 1978, effective July 1, 1999.

The 1989 amendment, effective April 7, 1989, deleted "including all earned income therefrom" following "and the fund" in the second sentence.

9-7-17.1. Repealed.

History: Laws 2012, ch. 42, § 1; repealed by Laws 2021 (1st S.S.), ch. 4, § 72.

ANNOTATIONS

Repeals. — Laws 2021 (1st S.S.), ch. 4, § 72 repealed 9-7-17.1 NMSA 1978, as enacted by Laws 2012, ch. 42, § 1, relating to medical cannabis fund, reporting, effective June 29, 2021, 2021. For provisions of former section, *see* the 2020 NMSA 1978 on *NMOneSource.com*.

9-7-18. Drug testing for health care providers in state health care facilities; grounds; rulemaking.

A. A health care provider hired to provide direct care to patients in a state health care facility shall be tested for illicit and prescription drug and alcohol abuse prior to employment and subject to random drug testing thereafter.

B. A health care provider providing direct care to patients in a state health care facility who is reasonably suspected of abusing illicit or prescription drugs or alcohol while working shall undergo drug testing without prior notice to the health care provider.

C. The department of health shall promulgate rules to establish:

(1) when a health care provider is reasonably suspected of abusing illicit or prescription drugs or alcohol while working;

(2) the protocol governing testing for illicit and prescription drugs and alcohol;

(3) what persons shall be considered reliable reporting parties for the purposes of this section;

(4) any disciplinary action, addiction interventions or fines pursuant to this section; and

(5) the definition of "direct care" for the purposes of this section.

D. When promulgating rules pursuant to Subsection D of this section, the department of health shall consult with representatives from:

(1) the New Mexico medical board;

(2) the board of nursing; and

(3) the New Mexico medical review commission.

E. For the purposes of this section:

(1) "health care provider" means any health care staff member who is licensed, certified or otherwise authorized or permitted by law to provide direct unsupervised health care to a patient;

(2) "illicit or prescription drug" means a substance listed in any of Schedules I through V of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978]; and

(3) "state health care facility" means a hospital, an entity providing services for the developmentally disabled, a shelter care home, a free-standing hospice or a home health agency that the department of health operates.

F. Results of drug tests made pursuant to the provisions of this section shall be treated as confidential medical information, and only aggregate test data shall be subject to review by the department of health.

G. A person who in good faith reports that a health care provider has been abusing illicit or prescription drugs or alcohol while working shall not be held liable for civil damages as a result of the report; provided that the health care provider reported as abusing illicit or prescription drugs or alcohol shall have the right to sue for damages sustained as a result of negligent or intentional reporting of inaccurate information or the disclosure of information to an unauthorized person.

History: Laws 2011, ch. 90, § 1.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 90 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

ARTICLE 7A
Department of Environment

9-7A-1. Short title.

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

History: Laws 1991, ch. 25, § 1.

ANNOTATIONS

Emergency clauses. — Laws 1991, ch. 25, § 38 contained an emergency clause and was approved March 29, 1991.

9-7A-2. Definitions.

As used in the Department of Environment Act:

A. "board" means the environmental improvement board;

B. "department" means the department of environment created under the Department of Environment Act; and

C. "secretary" means the secretary of environment.

History: Laws 1991, ch. 25, § 2.

ANNOTATIONS

Emergency clauses. — Laws 1991, ch. 25, § 38 contained an emergency clause and was approved March 29, 1991.

9-7A-3. Purpose.

The purpose of the Department of Environment Act is to establish a single department to administer the laws and exercise the functions relating to the environment formerly administered and exercised by the health and environment department.

History: Laws 1991, ch. 25, § 3.

ANNOTATIONS

Emergency clauses. — Laws 1991, ch. 25, § 38 contained an emergency clause and was approved March 29, 1991.

9-7A-4. Department established.

There is created in the executive branch the "department of environment". The department shall be a cabinet department and shall include, but not be limited to, an information technology division and the programs and functions of the environmental improvement division. All references in the law to the environmental improvement agency or the environmental improvement division of the health and environment department shall be construed to mean the department. All references to the director of the environmental improvement division shall be construed to mean the secretary. The department shall consist of the staff of the environmental improvement division and such other powers, duties and personnel of the former health and environment department as may be assigned by the governor pursuant to executive order.

History: Laws 1991, ch. 25, § 4; 2005, ch. 110, § 4.

ANNOTATIONS

Cross references. — For environmental improvement generally, *see* Chapter 74 NMSA 1978.

For powers of environmental improvement department, *see* 74-1-6 NMSA 1978 et seq.

For the Rural Infrastructure Act, *see* 75-1-1 NMSA 1978 et seq.

The 2005 amendment, effective June 17, 2005, creates the information technology division within the department of environment.

9-7A-5. Secretary of environment; appointment.

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

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

History: Laws 1991, ch. 25, § 5.

ANNOTATIONS

Emergency clauses. — Laws 1991, ch. 25, § 38 contained an emergency clause and was approved March 29, 1991.

9-7A-6. Secretary; duties and general powers.

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

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

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

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

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

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

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

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

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

(8) prepare an annual budget of the department;

(9) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978]. Persons appointed to these positions shall serve at the pleasure of the secretary;

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

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

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

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

History: Laws 1991, ch. 25, § 6.

ANNOTATIONS

Emergency clauses. — Laws 1991, ch. 25, § 38 contained an emergency clause and was approved March 29, 1991.

9-7A-7. Organizational units of the department; powers and duties specified by law; access to information.

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, and he shall retain the final decision-making authority and responsibility for the administration of any laws as provided in Subsection B of Section 6 [9-7A-6 NMSA 1978] of the Department of Environment Act. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law.

History: Laws 1991, ch. 25, § 7.

ANNOTATIONS

Emergency clauses. — Laws 1991, ch. 25, § 38 contained an emergency clause and was approved March 29, 1991.

9-7A-8. Directors.

The secretary shall appoint with the approval of the governor "directors" of divisions established within the department. The positions so appointed are exempt from the Personnel Act [Chapter 10, Article 9 NMSA 1978].

History: Laws 1991, ch. 25, § 8.

ANNOTATIONS

Emergency clauses. — Laws 1991, ch. 25, § 38 contained an emergency clause and was approved March 29, 1991.

9-7A-9. Bureaus; chiefs.

The secretary shall establish within each division such "bureaus" as he deems necessary to carry out the provisions of the Department of Environment Act. He shall employ a "chief" to be the administrative head of each bureau. The chief and all subsidiary employees of the department shall be covered by the Personnel Act [Chapter 10, Article 9 NMSA 1978] unless otherwise provided by law.

History: Laws 1991, ch. 25, § 9.

ANNOTATIONS

Emergency clauses. — Laws 1991, ch. 25, § 38 contained an emergency clause and was approved March 29, 1991.

9-7A-10. Advisory committees.

A. Advisory committees may be created. "Advisory" means furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or to comply with federal or private funding requirements and does not extend to administering a program or function or setting policy unless specified by law. Advisory committees shall be appointed in accordance with the provisions of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978].

B. All members of advisory committees appointed under the authority of this section shall receive as their sole remuneration for services as a member those amounts authorized under the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: Laws 1991, ch. 25, § 10.

ANNOTATIONS

Emergency clauses. — Laws 1991, ch. 25, § 38 contained an emergency clause and was approved March 29, 1991.

9-7A-11. Cooperation with the federal government; authority of secretary; single state agency status.

A. The department is authorized to cooperate with the federal government in the administration of environmental programs in which financial or other participation by the federal government is authorized or mandated under state or federal laws, regulations, rules or orders. The secretary may enter into agreements with agencies of the federal government to implement environmental programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor or the secretary may by appropriate order designate the department or any organizational unit of the department as the single state agency for the administration of any environmental program when that designation is a condition of federal financial or other participation in the program under applicable federal law, regulation, rule or order. Whether or not a federal condition exists, the governor may designate the department or any organizational unit of the department as the single state agency for the administration of any environmental program. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

History: Laws 1991, ch. 25, § 11.

ANNOTATIONS

Emergency clauses. — Laws 1991, ch. 25, § 38 contained an emergency clause and was approved March 29, 1991.

9-7A-12. Environmental improvement board; exemptions from authority of secretary.

The environmental improvement board shall receive staff support from the department. All powers, duties and responsibilities of the environmental improvement board under Sections 25-1-1 through 25-1-14, 25-2-1 through 25-2-19, 25-5-1 through 25-5-9, 50-9-1, through 50-9-25, 74-1-1 through 74-1-11, 74-2-1 through 74-2-17, 74-3-1 through 74-3-16, 74-4-1 through 74-4-13, 74-4A-1 through 74-4A-19, 74-6B-1 through 74-6B-11 [repealed], 74-7-1 through 74-7-8, 7-8-1 through 7-8-3 [74-8-1 to 74-8-3], 74-9-1 through 74-9-42 and 75-1-1 through 75-1-6 NMSA 1978 are explicitly exempt from the authority of the secretary under the provisions of Subsection B of Section 6 [9-7A-6 NMSA 1978] of the Department of Environment Act.

History: Laws 1991, ch. 25, § 12.

ANNOTATIONS

Emergency clauses. — Laws 1991, ch. 25, § 38 contained an emergency clause and was approved March 29, 1991.

Bracketed material. — The bracketed material "74-8-1 through 74-8-3" was inserted by the compiler to correct an apparent typographical error and is not part of the law.

Laws 1993, ch. 298, § 5 repealed 74-6B-11 NMSA 1978, effective April 7, 1993.

9-7A-13. Water quality control commission; exemptions from authority of secretary of environment.

The water quality control commission shall receive staff support from the department of environment. All powers, duties and responsibilities of the water quality control commission under Sections 47-6-11, 74-6-3 through 74-6-8, 74-6-10 and 74-6-12 NMSA 1978 are hereby explicitly exempted from the authority of the secretary under provisions of Subsection B of Section 6 [9-7A-6 NMSA 1978] of the Department of Environment Act.

History: 1978 Comp., § 9-7-14, enacted by Laws 1977, ch. 253, § 77; recompiled as 1978 Comp., § 9-7A-13; 1991, ch. 25, § 25.

ANNOTATIONS

The 1991 amendment, effective March 29, 1991, deleted "health and" preceding "environment" in the catchline; substituted "department of environment" for "environmental improvement division of the health and environment department" in the first sentence; and rewrote the second sentence, which read "All powers, duties and responsibilities of the water quality control commission under Sections 47-6-11, 61-30-4, 61-30-5, 61-30-7 through 61-30-9, 74-6-3 through 74-6-8, 74-6-10 and 74-6-12 NMSA 1978 are hereby explicitly exempted from the authority of the secretary of health and environment under provisions of Subsection B of Section 7 of the Health and Environment Department Act".

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity of statute prescribing standard of purity of water furnished for human consumption, 6 A.L.R. 475.

Validity of statute, ordinance or other measure involving chemical treatment of public water supply, 43 A.L.R.2d 453.

9-7A-14. Occupational health and safety review commission; exemptions from authority of secretary of environment.

The occupational health and safety review commission shall receive staff support from the department of environment. All powers, duties and responsibilities of the occupational health and safety review commission under Sections 50-9-9, 50-9-17 and

50-9-24 NMSA 1978 are hereby explicitly exempted from the authority of the secretary under provisions of Subsection B of Section 6 [9-7A-6 NMSA 1978] of The [the] Department of Environment Act.

History: 1978 Comp., § 9-7-15, enacted by Laws 1977, ch. 253, § 78; recompiled as 1978 Comp., § 9-7A-14; 1991, ch. 25, § 26.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

The 1991 amendment, effective March 29, 1991, deleted "health and" preceding "environment" in the catchline; in the first sentence, substituted "receive" for "review" and "department of environment" for "environmental improvement division of the health and environment department"; and rewrote the second sentence, which read "All powers, duties and responsibilities of the occupational health and safety review commission under 50-9-9, 50-9-17 and 59-9-24 NMSA 1978 are hereby explicitly exempted from the authority of the secretary of health and environment under provisions of Subsection B of Section 7 of the Health and Environment Department Act".

9-7A-15. Technical advisory committee created; duties and powers of the committee.

A. The "wastewater technical advisory committee" is created. The committee shall consist of five members to be appointed by and to serve at the pleasure of the secretary of environment. The members shall include:

(1) a wastewater treatment system engineer with at least ten years of experience in wastewater system design and construction;

(2) a faculty member from a university or college located within New Mexico with a minimum of a master's degree in biological science, microbiology, soil science or engineering, and with a minimum of ten years of work or academic experience with wastewater treatment or wastewater treatment facility management;

(3) a representative from the New Mexico state university water utilities technical assistance program;

(4) a class IV certified wastewater operator with at least ten years of experience; and

(5) a representative from the New Mexico home builders association.

B. The term of appointed members shall be three years. Members shall serve until their successors are appointed. Vacancies occurring in the membership of an appointed member shall be filled by the secretary for the remainder of the unexpired term.

C. The committee shall conduct open meetings as needed, but not less than quarterly.

D. The department of environment shall provide technical and legal assistance to the committee as needed.

E. The committee shall:

(1) establish procedures, practices and policies governing the committee's activities;

(2) provide standardized objective evaluation of wastewater treatment and disposal technologies for both large- and small-flow domestic, commercial and agricultural wastewater systems and submit its findings to the secretary for final approval by the secretary, who shall add the wastewater treatment and disposal technologies to the list of approved technologies maintained by the department, including the ground water quality bureau and the liquid waste program of the field operations division of the department of environment and their constituent agencies; and

(3) maintain a current list of approved wastewater technologies accessible by the public on the department's internet site.

F. Members of the committee shall receive reimbursement for expenses incurred in the performance of their duties pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance. Expenditures for this purpose shall be made from the budgeted funds of the department.

History: Laws 2003, ch. 99, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 99 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

9-7A-16. Uranium mining reclamation; department of environment; duties.

A. The department of environment shall:

(1) coordinate efforts across the state to clean up and reclaim former uranium mine and mill sites. The energy, minerals and natural resources department; the Indian affairs department; the office of natural resources trustee; the state land office; the department of game and fish; the cultural affairs department; the department of health; the workforce solutions department; the economic development department; and the department of transportation shall work in conjunction with the department of environment to support the department's duties as they relate to the purposes of the respective departments and agencies;

(2) develop a strategic plan for the cleanup of uranium mine and mill sites throughout the state, including reclamation goals, time lines for the completion of cleanup activities at specific sites and anticipated funding requirements. The department of environment shall consult with the departments and agencies enumerated in Paragraph (1) of this subsection in the development of the strategic plan and include in the strategic plan the respective agencies' and departments' input;

(3) establish an effective mechanism for consultation and coordination with the federal government; Indian nations, tribes and pueblos; communities impacted by uranium mining; and other states on uranium mine and mill reclamation activities;

(4) work with the economic development department, workforce solutions department and industry to establish uranium mine and mill reclamation as a target economic development industry in New Mexico, including the creation, coordination and promotion of worker training and business development programs for reclamation activities;

(5) develop, maintain and update on a regular basis a centralized repository of uranium mine and mill sites and reclamation activities. The repository shall include, at minimum, the location of uranium mine and mill sites, information about the ownership and legal jurisdiction of each site and each site's cleanup status and shall use any information currently maintained or possessed by the energy, minerals and natural resources department relating to uranium mine and mill sites; and

(6) on an annual basis, report to the radioactive and hazardous materials committee on the department of environment's activities in the preceding year. The department of environment shall consult with the departments and agencies enumerated in Paragraph (1) of this subsection and include in the report the activities undertaken by the respective departments and agencies in the preceding year that are related to uranium mine and mill site reclamation.

B. The secretary of environment shall create a uranium mine reclamation coordinator position and employ additional staff as needed for the department of environment to carry out the provisions of this section.

History: Laws 2022, ch. 26, § 1.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 26 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

9-7A-17. Uranium mining reclamation revolving fund; created.

A. The "uranium mining reclamation revolving fund" is created in the state treasury. The uranium mining reclamation revolving fund consists of appropriations, gifts, grants, donations and money received by the department of environment or the energy, minerals and natural resources department from the federal government or other state agencies and other sources for conducting uranium mine and mill reclamation activities. Money recovered for the state by or on behalf of the department of environment or the energy, minerals and natural resources department from uranium mine or mill reclamation related litigation or settlements shall be deposited in the uranium mining reclamation revolving fund.

B. The uranium mining reclamation revolving fund shall be administered by the department of environment. Money in the fund is subject to appropriation by the legislature. Expenditures may be made from the fund for the department of environment or the energy, minerals and natural resources department to undertake projects to reclaim uranium mine and mill sites, including the acquisition of tools and equipment; expenses incurred by the department of environment or the energy, minerals and natural resources department in planning, supervising and completing uranium mine and mill reclamation projects; and expenses incurred in litigation involving uranium mine or mill sites; provided that money in the fund shall not be used for the operational expenses of the department of environment or the energy, minerals and natural resources department. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of environment or the secretary of energy, minerals and natural resources or their designees.

C. Money in the uranium mining reclamation revolving fund shall not revert to the general fund at the end of a fiscal year.

History: Laws 2022, ch. 26, § 3.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 26 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

ARTICLE 8
Health Care Authority Department

9-8-1. Short title.

Chapter 9, Article 8 NMSA 1978 may be cited as the "Health Care Authority Department Act".

History: 1978 Comp., § 9-8-1, enacted by Laws 1977, ch. 252, § 1; 2007, ch. 325, § 2; 2023, ch. 205, § 1.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, after "cited as", deleted "Human Services" and added "Health Care Authority".

Temporary provisions. — Laws 2023, ch. 205, § 16 provided:

A. The governor may issue an executive order that further delineates the organizational structure, power and duties of the health care authority department and moves divisions and programs to or from other departments to accomplish the reorganizational goals of this act. The governor shall report the reorganizational changes and recommend statutory changes to the legislative health and human services committee and the legislative finance committee by November 1, 2023 and provide a final reorganization report to the legislature by January 1, 2024.

B. On July 1, 2023, statutory references to the human services department shall be deemed to be references to the health care authority department, and contractual obligations of the human services department shall be binding on the health care authority department. Rules of the human services department shall be the rules of the health care authority department until amended or repealed. As functions of government are transferred to the health care authority department as specified in Section 9-8-4 NMSA 1978, statutory references shall be deemed to be references to the health care authority department, contractual obligations shall be binding on the department and existing pertinent rules shall be the rules of the department until amended or repealed.

C. The department of finance and administration, the secretary of health care authority, the secretary of health, the secretary of general services, members of the governor's staff and other persons assigned by the governor shall develop a transition plan that includes:

(1) what units of the executive department shall be transferred to or from the health care authority department and working and final organizational charts for all affected units of the executive departments;

(2) how and when functions, personnel, money, appropriations, equipment, supplies and other property of the human services department, the department of health, the general services department and other units of the executive department shall be transferred to or from the health care authority department; and

(3) proposed statutory changes, including changes in Chapters 9, 10 and 24 NMSA 1978 and the creation of a new chapter of the NMSA 1978 to include sections of Chapters 9 and 24 NMSA 1978 and other provisions of law pertaining to health care purchasing and regulation.

The 2007 amendment, effective June 15, 2007, changed the statutory reference to the act.

9-8-2. Definitions.

As used in the Health Care Authority Department Act:

A. "department" means the health care authority department; and

B. "secretary" means the secretary of health care authority.

History: 1978 Comp., § 9-8-2, enacted by Laws 1977, ch. 252, § 2; 2023, ch. 205, § 2.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, changed the name of the humans services department to the health care authority department, and revised the definition of "secretary" as used in the Health Care Authority Department Act; in the section heading, deleted "Human Services" and added "Health Care Authority"; in Subsection A, after "means the", deleted "human services department created under the Human Services Department Act" and added "health care authority department"; and in Subsection B, after "secretary of", deleted "the department" and added "health care authority".

9-8-3. Purpose.

The purpose of the Health Care Authority Department Act is to establish a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.

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; 2023, ch. 205, § 3.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, changed the name of the humans services department to the health care authority department, and revised the duties of the department; after "The purpose of the", deleted "Human Services" and added "Health Care Authority", and after "relating to", deleted "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" and added "health care purchasing and regulation".

Temporary provisions. — Laws 2023, ch. 205, § 16 provided:

A. The governor may issue an executive order that further delineates the organizational structure, power and duties of the health care authority department and moves divisions and programs to or from other departments to accomplish the reorganizational goals of this act. The governor shall report the reorganizational changes and recommend statutory changes to the legislative health and human services committee and the legislative finance committee by November 1, 2023 and provide a final reorganization report to the legislature by January 1, 2024.

B. On July 1, 2023, statutory references to the human services department shall be deemed to be references to the health care authority department, and contractual obligations of the human services department shall be binding on the health care authority department. Rules of the human services department shall be the rules of the health care authority department until amended or repealed. As functions of government are transferred to the health care authority department as specified in Section 9-8-4 NMSA 1978, statutory references shall be deemed to be references to the health care authority department, contractual obligations shall be binding on the department and existing pertinent rules shall be the rules of the department until amended or repealed.

C. The department of finance and administration, the secretary of health care authority, the secretary of health, the secretary of general services, members of the governor's staff and other persons assigned by the governor shall develop a transition plan that includes:

(1) what units of the executive department shall be transferred to or from the health care authority department and working and final organizational charts for all affected units of the executive departments;

(2) how and when functions, personnel, money, appropriations, equipment, supplies and other property of the human services department, the department of health, the general services department and other units of the executive department shall be transferred to or from the health care authority department; and

(3) proposed statutory changes, including changes in Chapters 9, 10 and 24 NMSA 1978 and the creation of a new chapter of the NMSA 1978 to include sections of

Chapters 9 and 24 NMSA 1978 and other provisions of law pertaining to health care purchasing and regulation.

9-8-4. Department established.

A. The "health care authority department" is created in the executive branch. The department is a cabinet department and consists of:

(1) the office of the secretary of health care authority;

(2) the administrative services division;

(3) the information technology division;

(4) the behavioral health services division;

(5) the developmental disabilities division;

(6) the health improvement division;

(7) the medical assistance division;

(8) the state health benefits division;

(9) the child support enforcement division; and

(10) the income support division.

B. All references in the law to the behavioral health services division of the department of health or to the mental health division of the department of health in Sections 29-11-1 through 29-11-7 NMSA 1978 or to the department of health in Sections 43-2-1.1 through 43-2-23 NMSA 1978 shall be construed as referring to the health care authority department.

History: 1978 Comp., § 9-8-4, enacted by Laws 1977, ch. 252, § 4; 1981, ch. 88, § 2; 2005, ch. 110, § 5; 2007, ch. 325, § 3; 2023, ch. 205, § 4.

ANNOTATIONS

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

For public assistance generally, *see* Chapter 27 NMSA 1978.

For human rights generally, *see* Chapter 28 NMSA 1978.

For veterans' services, *see* Chapter 9. Article 22 NMSA 1978.

For delinquent, abused and neglected children, *see* 32A-2-1 to 32A-2-33 and 32A-4-1 to 32A-4-34 NMSA 1978.

For adoption generally, *see* 32A-5-1 to 32A-5-45 NMSA 1978.

For the Mandatory Medical Support Act, *see* 40-4C-1 NMSA 1978 et seq.

The 2023 amendment, effective June 16, 2023, changed the name of the humans services department to the health care authority department, reorganized the department, adding four new divisions; in Subsection A, deleted "There is created in the executive branch"; after "The", deleted "human services" and added "'health care authority'"; after "department", added is created in the executive branch"; after "cabinet department and", deleted "shall consist of, but not be limited to, six divisions as follows"; deleted former Paragraphs A(1) through A(6); and added new Paragraphs A(1) through A(10); and in Subsection B, after "referring to the", deleted "human services" and added "health care authority".

Temporary provisions. — Laws 2023, ch. 205, § 16 provided:

A. The governor may issue an executive order that further delineates the organizational structure, power and duties of the health care authority department and moves divisions and programs to or from other departments to accomplish the reorganizational goals of this act. The governor shall report the reorganizational changes and recommend statutory changes to the legislative health and human services committee and the legislative finance committee by November 1, 2023 and provide a final reorganization report to the legislature by January 1, 2024.

B. On July 1, 2023, statutory references to the human services department shall be deemed to be references to the health care authority department, and contractual obligations of the human services department shall be binding on the health care authority department. Rules of the human services department shall be the rules of the health care authority department until amended or repealed. As functions of government are transferred to the health care authority department as specified in Section 9-8-4 NMSA 1978, statutory references shall be deemed to be references to the health care authority department, contractual obligations shall be binding on the department and existing pertinent rules shall be the rules of the department until amended or repealed.

C. The department of finance and administration, the secretary of health care authority, the secretary of health, the secretary of general services, members of the governor's staff and other persons assigned by the governor shall develop a transition plan that includes:

(1) what units of the executive department shall be transferred to or from the health care authority department and working and final organizational charts for all affected units of the executive departments;

(2) how and when functions, personnel, money, appropriations, equipment, supplies and other property of the human services department, the department of health, the general services department and other units of the executive department shall be transferred to or from the health care authority department; and

(3) proposed statutory changes, including changes in Chapters 9, 10 and 24 NMSA 1978 and the creation of a new chapter of the NMSA 1978 to include sections of Chapters 9 and 24 NMSA 1978 and other provisions of law pertaining to health care purchasing and regulation.

The 2007 amendment, effective June 15, 2007, added Paragraphs (3) through (5) of Subsection A and added Subsection B.

The 2005 amendment, effective June 17, 2005, created the information technology division within the human services department.

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 health care authority; appointment.

A. The administrative head of the health care authority department is the "secretary of health care authority", 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 the appointed secretary's appointment.

History: 1978 Comp., § 9-8-5, enacted by Laws 1977, ch. 252, § 6; 2023, ch. 205, § 5.

ANNOTATIONS

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

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

The 2023 amendment, effective June 16, 2023, changed the name of the humans services department to the health care authority department, and updated certain language; in the section heading, deleted "human services" and added "health care

authority"; and in Subsection A, after "head of", deleted "human services" and added "health care authority", and after "secretary of", deleted "human services" and added "health care authority".

Temporary provisions. — Laws 2023, ch. 205, § 16 provided:

A. The governor may issue an executive order that further delineates the organizational structure, power and duties of the health care authority department and moves divisions and programs to or from other departments to accomplish the reorganizational goals of this act. The governor shall report the reorganizational changes and recommend statutory changes to the legislative health and human services committee and the legislative finance committee by November 1, 2023 and provide a final reorganization report to the legislature by January 1, 2024.

B. On July 1, 2023, statutory references to the human services department shall be deemed to be references to the health care authority department, and contractual obligations of the human services department shall be binding on the health care authority department. Rules of the human services department shall be the rules of the health care authority department until amended or repealed. As functions of government are transferred to the health care authority department as specified in Section 9-8-4 NMSA 1978, statutory references shall be deemed to be references to the health care authority department, contractual obligations shall be binding on the department and existing pertinent rules shall be the rules of the department until amended or repealed.

C. The department of finance and administration, the secretary of health care authority, the secretary of health, the secretary of general services, members of the governor's staff and other persons assigned by the governor shall develop a transition plan that includes:

(1) what units of the executive department shall be transferred to or from the health care authority department and working and final organizational charts for all affected units of the executive departments;

(2) how and when functions, personnel, money, appropriations, equipment, supplies and other property of the human services department, the department of health, the general services department and other units of the executive department shall be transferred to or from the health care authority department; and

(3) proposed statutory changes, including changes in Chapters 9, 10 and 24 NMSA 1978 and the creation of a new chapter of the NMSA 1978 to include sections of Chapters 9 and 24 NMSA 1978 and other provisions of law pertaining to health care purchasing and regulation.

9-8-6. Secretary; duties and general powers.

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

B. To perform duties of office, 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 Health Care Authority Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and rules;

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

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

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

(5) conduct background checks on department employees and prospective department employees that have or will have access to federal tax information; provided that:

(a) local law enforcement agency criminal history record checks shall be conducted on all employees, prospective employees, contractors, prospective contractors, subcontractors and prospective subcontractors with access to federal tax information;

(b) record checks for any identified arrests shall be conducted through local law enforcement agencies in jurisdictions where the subject has lived, worked or attended school within the last five years preceding the record check;

(c) federal bureau of investigation fingerprinting shall be conducted on all employees, prospective employees, contractors, prospective contractors, subcontractors and prospective subcontractors with access to federal tax information;

(d) for the purpose of conducting a national agency background check, the department shall submit to the department of public safety and the federal bureau of investigation a fingerprint card for each of the following personnel who have or will have access to federal tax information: 1) employees; 2) prospective employees; 3)

contractors; 4) prospective contractors; 5) subcontractors; and 6) prospective subcontractors;

(e) the department shall conduct a check for eligibility to legally work as a citizen or legal resident of the United States on all employees, prospective employees, contractors, prospective contractors, subcontractors and prospective subcontractors with access to federal tax information. The department shall complete a citizenship or residency check for each new employee and any employee with expiring employment eligibility and shall document and monitor the employee's citizenship or residency status for continued compliance;

(f) criminal history records obtained by the department pursuant to the provisions of this paragraph and the information contained in those records are confidential, shall not be used for any purpose other than conducting background checks for the purpose of determining eligibility for employment and shall not be released or disclosed to any other person or agency except pursuant to a court order or with the written consent of the person who is the subject of the records;

(g) a person who releases or discloses criminal history records or information contained in those records in violation of the provisions of this paragraph is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(h) the secretary shall adopt and promulgate rules to establish procedures to provide for background checks; provided that background checks shall not be evaluated for any purpose other than a person's department-related activities, and criteria according to which background checks are evaluated, for all present and prospective personnel identified in the provisions of this paragraph;

(i) contractors, prospective contractors, subcontractors and prospective subcontractors shall bear any costs associated with ordering or conducting background checks pursuant to this paragraph; and

(j) a department employee or prospective department employee who is denied employment or whose employment is terminated based on information obtained in a background check shall be entitled to review the information obtained pursuant to this paragraph and to appeal the decision;

(6) 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 the secretary is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

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

(8) 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;

(9) prepare an annual budget of the department;

(10) 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; and

(11) 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.

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

D. 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 procedural rules as may be necessary to carry out the duties of the department and its divisions. No rule 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 rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, 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 rule or proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing.

F. In the event the secretary anticipates that adoption, amendment or repeal of a rule 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 rules 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 effective for a period not to exceed ninety days. Interim rules shall not be promulgated without first providing a written notice twenty days in advance to providers of medical or behavioral health services and beneficiaries of department programs. At the time of the promulgation of the interim rules, the department shall give notice of the public hearing on the final rules in accordance with Subsection E of this section.

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

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

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

(3) rules promulgated pursuant to the provisions of this subsection shall be in effect not less than five days after the public hearing;

(4) rules promulgated pursuant to the provisions of this subsection shall not be in effect for more than ninety days; and

(5) if final rules are necessary to replace the interim rules, the department shall give notice of intent to promulgate final rules at the time of notice herein. The final rules shall be promulgated not more than forty-five days after the public hearing and filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

H. At the time of the promulgation of the interim rules, the department shall give notice of the public hearing on the final rules in accordance with Subsection E of this section.

I. The secretary shall ensure that any behavioral health services, including mental health and substance abuse services, provided, contracted for or approved are in compliance with the requirements of Section 9-7-6.4 NMSA 1978.

J. All rules shall be filed in accordance with the State Rules Act.

History: 1978 Comp., § 9-8-6, enacted by Laws 1977, ch. 252, § 7; 1981, ch. 133, § 1; 1989, ch. 82, § 1; 1993, ch. 342, § 2; 2004, ch. 46, § 10; 2019, ch. 111, § 1; 2023, ch. 205, § 6.

ANNOTATIONS

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

For cooperation with federal financial or other participation in programs, *see* 9-8-12 NMSA 1978.

For state budgets, *see* 6-3-1 to 6-3-25 NMSA 1978.

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

For abandonment or abuse of a child, *see* 30-6-1 NMSA 1978.

The 2023 amendment, effective June 16, 2023, changed the name of the humans services department to the health care authority department, and removed provisions requiring the secretary, directors and other employees to post performance bonds; in Subsection B, Paragraph B(1), after "provided in", deleted "Human Services" and added "Health Care Authority"; and deleted Paragraphs B(12) and B(13).

Temporary provisions. — Laws 2023, ch. 205, § 16 provided:

A. The governor may issue an executive order that further delineates the organizational structure, power and duties of the health care authority department and moves divisions and programs to or from other departments to accomplish the reorganizational goals of this act. The governor shall report the reorganizational changes and recommend statutory changes to the legislative health and human services committee and the legislative finance committee by November 1, 2023 and provide a final reorganization report to the legislature by January 1, 2024.

B. On July 1, 2023, statutory references to the human services department shall be deemed to be references to the health care authority department, and contractual obligations of the human services department shall be binding on the health care authority department. Rules of the human services department shall be the rules of the health care authority department until amended or repealed. As functions of government are transferred to the health care authority department as specified in Section 9-8-4 NMSA 1978, statutory references shall be deemed to be references to the

health care authority department, contractual obligations shall be binding on the department and existing pertinent rules shall be the rules of the department until amended or repealed.

C. The department of finance and administration, the secretary of health care authority, the secretary of health, the secretary of general services, members of the governor's staff and other persons assigned by the governor shall develop a transition plan that includes:

(1) what units of the executive department shall be transferred to or from the health care authority department and working and final organizational charts for all affected units of the executive departments;

(2) how and when functions, personnel, money, appropriations, equipment, supplies and other property of the human services department, the department of health, the general services department and other units of the executive department shall be transferred to or from the health care authority department; and

(3) proposed statutory changes, including changes in Chapters 9, 10 and 24 NMSA 1978 and the creation of a new chapter of the NMSA 1978 to include sections of Chapters 9 and 24 NMSA 1978 and other provisions of law pertaining to health care purchasing and regulation.

The 2019 amendment, effective March 28, 2019, required certain background checks and procedures for human services department personnel, and provided a penalty for any person who releases or discloses criminal history records or information contained in those records in violation of the provisions of this section; removed references to "regulations" throughout the section; and in Subsection B, added new Paragraph B(5) and redesignated the succeeding paragraphs accordingly.

The 2004 amendment, effective May 19, 2004, amended Paragraph (2) of Subsection F to add "or behavioral health" before "services", added new Subsection I and redesignated former Subsection I as Subsection J.

The 1993 amendment, effective April 8, 1993, made a stylistic change near the beginning of Subsection F and added present Subsection G, redesignating former Subsection G as Subsection H.

Publication in New Mexico register. — Publication of a notice, proposed rule, or adopted rule in the New Mexico human services register does not fulfill the human services department's [health care authority department's] duty to publish materials required by the New Mexico register. 1993 Op. Att'y Gen. No. 93-02.

No responsibility by state records center to determine compliance of promulgated rules with hearing and notice requirements. 1978 Op. Att'y Gen. No. 78-07.

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 the secretary shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 9-8-6 NMSA 1978. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law.

History: 1978 Comp., § 9-8-7, enacted by Laws 1977, ch. 252, § 8; 2023, ch. 205, § 7.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, deleted "7 of the Human Services Department Act" and added "9-8-6 NMSA 1978".

Temporary provisions. — Laws 2023, ch. 205, § 16 provided:

A. The governor may issue an executive order that further delineates the organizational structure, power and duties of the health care authority department and moves divisions and programs to or from other departments to accomplish the reorganizational goals of this act. The governor shall report the reorganizational changes and recommend statutory changes to the legislative health and human services committee and the legislative finance committee by November 1, 2023 and provide a final reorganization report to the legislature by January 1, 2024.

B. On July 1, 2023, statutory references to the human services department shall be deemed to be references to the health care authority department, and contractual obligations of the human services department shall be binding on the health care authority department. Rules of the human services department shall be the rules of the health care authority department until amended or repealed. As functions of government are transferred to the health care authority department as specified in Section 9-8-4 NMSA 1978, statutory references shall be deemed to be references to the health care authority department, contractual obligations shall be binding on the

department and existing pertinent rules shall be the rules of the department until amended or repealed.

C. The department of finance and administration, the secretary of health care authority, the secretary of health, the secretary of general services, members of the governor's staff and other persons assigned by the governor shall develop a transition plan that includes:

(1) what units of the executive department shall be transferred to or from the health care authority department and working and final organizational charts for all affected units of the executive departments;

(2) how and when functions, personnel, money, appropriations, equipment, supplies and other property of the human services department, the department of health, the general services department and other units of the executive department shall be transferred to or from the health care authority department; and

(3) proposed statutory changes, including changes in Chapters 9, 10 and 24 NMSA 1978 and the creation of a new chapter of the NMSA 1978 to include sections of Chapters 9 and 24 NMSA 1978 and other provisions of law pertaining to health care purchasing and regulation.

9-8-7.1. Behavioral health services division; powers and duties of the department.

Subject to appropriation, the department shall:

A. contract for behavioral health treatment and support services, including mental health, alcoholism and other substance abuse services;

B. establish standards for the delivery of behavioral health services, including quality management and improvement, performance measures, accessibility and availability of services, utilization management, credentialing and recredentialing, rights and responsibilities of providers, preventive behavioral health services, clinical treatment and evaluation and the documentation and confidentiality of client records;

C. ensure that all behavioral health services, including mental health and substance abuse services, that are provided, contracted for or approved are in compliance with the requirements of Section 9-7-6.4 NMSA 1978;

D. assume responsibility for and implement adult mental health and substance abuse services in the state in coordination with the children, youth and families department;

E. create, implement and continually evaluate the effectiveness of a framework for targeted, individualized interventions for persons who are incarcerated in a county or

municipal correctional facility and adult and juvenile offenders who have behavioral health diagnoses, which framework shall address those persons' behavioral health needs while they are incarcerated and connect them to resources and services immediately upon release;

F. establish criteria for determining individual eligibility for behavioral health services; and

G. maintain a management information system in accordance with standards for reporting clinical and fiscal information.

History: Laws 2007, ch. 325, § 4; 2019, ch. 211, § 1; 2019, ch. 222, § 1; 2023, ch. 205, § 8.

ANNOTATIONS

Repeals. — Laws 2023, ch. 205, § 17 repealed Laws 2019, ch. 211, § 1, effective June 16, 2023.

The 2023 amendment, effective June 16, 2023, in the section heading, deleted "human services".

Temporary provisions. — Laws 2023, ch. 205, § 16 provided:

A. The governor may issue an executive order that further delineates the organizational structure, power and duties of the health care authority department and moves divisions and programs to or from other departments to accomplish the reorganizational goals of this act. The governor shall report the reorganizational changes and recommend statutory changes to the legislative health and human services committee and the legislative finance committee by November 1, 2023 and provide a final reorganization report to the legislature by January 1, 2024.

B. On July 1, 2023, statutory references to the human services department shall be deemed to be references to the health care authority department, and contractual obligations of the human services department shall be binding on the health care authority department. Rules of the human services department shall be the rules of the health care authority department until amended or repealed. As functions of government are transferred to the health care authority department as specified in Section 9-8-4 NMSA 1978, statutory references shall be deemed to be references to the health care authority department, contractual obligations shall be binding on the department and existing pertinent rules shall be the rules of the department until amended or repealed.

C. The department of finance and administration, the secretary of health care authority, the secretary of health, the secretary of general services, members of the

governor's staff and other persons assigned by the governor shall develop a transition plan that includes:

(1) what units of the executive department shall be transferred to or from the health care authority department and working and final organizational charts for all affected units of the executive departments;

(2) how and when functions, personnel, money, appropriations, equipment, supplies and other property of the human services department, the department of health, the general services department and other units of the executive department shall be transferred to or from the health care authority department; and

(3) proposed statutory changes, including changes in Chapters 9, 10 and 24 NMSA 1978 and the creation of a new chapter of the NMSA 1978 to include sections of Chapters 9 and 24 NMSA 1978 and other provisions of law pertaining to health care purchasing and regulation.

The 2019 amendment, effective June 14, 2019, required the behavioral health services division of the human services department to create, implement, and evaluate a framework of interventions for adult and juvenile offenders incarcerated in a county or municipal correctional facility to address offenders' needs while they are incarcerated and connect them to resources and services upon their release; added new Subsection E and redesignated former Subsections E and F as Subsections F and G, respectively..

Department's burden in an action to recover improper payments from providers. — In an action to recover improper payments to providers, the New Mexico human services department [health care authority department] not only must provide by a preponderance of the evidence at the fair hearing that the identified claims failed, but also that its mathematical calculations of the overpayment were properly calculated and the methodology it used to choose the sample was valid. *Counseling Center, Inc. v. N.M. Human Servs. Dep't*, 2018-NMCA-063, cert. denied.

Provider's burden in a department action to recover improper payments. — If a health care provider wishes to challenge the methodology used to choose the sample size of an audit or to randomly select the claims for audit, the relevant regulation requires that, rather than merely choose a different sample size, or select a different set of claims for audit, the provider must audit the entire universe of claims at issue. *Counseling Center, Inc. v. N.M. Human Servs. Dep't*, 2018-NMCA-063, cert. denied.

The administrative law judge improperly shifted the burden of proof. — Where the New Mexico human services department (HSD) [health care authority department] appealed the district court's reversal of an administrative decision requiring respondent, a behavioral health care provider, to reimburse HSD for claimed overpayments, and where the administrative law judge (ALJ) failed to reach any conclusion regarding the validity of the alleged failed claims because respondent had not performed a one-hundred percent audit of the universe of provider records, the ALJ improperly shifted the

burden of proof to respondent, as respondent was not required to provide a one-hundred percent audit of the universe of providers before the ALJ could properly consider whether the claims used to extrapolate respondent's alleged overpayment actually failed. *Counseling Center, Inc. v. N.M. Human Servs. Dep't*, 2018-NMCA-063, cert. denied.

Substantial evidence of over payment of medicaid funds. — Where the New Mexico human services department (HSD) [health care authority department] appealed the district court's reversal of an administrative decision requiring respondent, a behavioral health care provider, to reimburse HSD for claimed overpayments, and where the administrative law judge (ALJ) concluded that respondent was credited with medicaid funds, notwithstanding that respondent did not bill these claims to medicaid, the district court erred when it concluded that the ALJ's decision requiring respondent to return fees was not supported by substantial evidence, because the uncontroverted evidence established that respondent was paid with medicaid funds that were not eligible for payment by medicaid, and federal law requires that overpayments of medicaid funds must be returned. *Counseling Center, Inc. v. N.M. Human Servs. Dep't*, 2018-NMCA-063, cert. denied.

9-8-7.2. Cooperation with the New Mexico health insurance exchange.

The medical assistance division of the department shall cooperate with the New Mexico health insurance exchange to share information and facilitate transitions in enrollment between the exchange and medicaid.

History: Laws 2013, ch. 54, § 9; 2023, ch. 205, § 9.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, after "medical assistance division of the", deleted "human services".

Severability. — Laws 2013, ch. 54, § 16 provided that if any part or application of Laws 2013, ch. 54, §§ 1 through 15 are held invalid, the remainder or its application to other situations or persons shall not be affected.

9-8-7.3. Incarcerated persons; behavioral health services; county funding program.

To carry out the provisions of Subsection E of Section 9-8-7.1 NMSA 1978 and to provide behavioral health services to persons who are incarcerated in a county correctional facility:

A. the secretary shall adopt and promulgate rules:

(1) pursuant to which a county may apply for and be awarded funding through the department; and

(2) to establish priorities and guidelines for the award of funding to counties; and

B. the department shall distribute funds, as funding permits, to the county health care assistance funds of those counties:

(1) that apply for behavioral health services funding in accordance with department rules; and

(2) whose proposed utilization of funding pursuant to this section meets the priorities and guidelines for the awarding of behavioral health services funding established in department rules.

History: Laws 2019, ch. 222, § 2; 2023, ch. 205, § 10.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, substituted each occurrence of "individuals" with "persons" throughout the section.

9-8-7.4. Incarcerated persons; behavioral health services; county funding program.

To carry out the provisions of Subsection E of Section 9-8-7.1 NMSA 1978 and to provide behavioral health services to persons who are incarcerated in a county correctional facility:

A. the secretary shall adopt and promulgate rules:

(1) pursuant to which a county may apply for and be awarded funding through the department; and

(2) to establish priorities and guidelines for the award of funding to counties; and

B. the department shall distribute funds, as funding permits, to the county health care assistance funds of those counties:

(1) that apply for behavioral health services funding in accordance with department rules; and

(2) that have proposed utilization of funding pursuant to this section that meets the priorities and guidelines for the awarding of behavioral health services funding established in department rules.

History: Laws 2019, ch. 211, § 2; 2023, ch. 205, § 11.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, substituted each occurrence of "individuals" with "persons" throughout the section.

9-8-8. Administratively attached agencies.

The following agencies are administratively attached to the department:

A. the commission on the status of women;

B. the group benefits committee; and

C. the New Mexico health policy commission.

History: 1978 Comp., § 9-8-8, enacted by Laws 1977, ch. 252, § 9; 1979, ch. 203, § 8; 1987, ch. 342, § 15; 2004, ch. 18, § 16; 2004, ch. 23, § 12; 2004, ch. 24, § 16; 2023, ch. 205, § 12.

ANNOTATIONS

Cross references. — For human rights commission, *see* 28-1-3 to 28-1-14 NMSA 1978.

For commission on status of women, *see* 28-3-1 to 28-3-11 NMSA 1978.

For state agency on aging, *see* 28-4-4 to 28-4-9 NMSA 1978.

The 2023 amendment, effective June 16, 2023, added the groups benefits committee and the New Mexico health policy commission to the list of agencies that are administratively attached to the health care authority department; added "following agencies are administratively attached to the department"; in Subsection A, after "status of women", deleted "is administratively attached to the human services department in accordance with the Executive Reorganization Act"; and added Subsections B and C.

Temporary provisions. — Laws 2023, ch. 205, § 16 provided:

A. The governor may issue an executive order that further delineates the organizational structure, power and duties of the health care authority department and moves divisions and programs to or from other departments to accomplish the

reorganizational goals of this act. The governor shall report the reorganizational changes and recommend statutory changes to the legislative health and human services committee and the legislative finance committee by November 1, 2023 and provide a final reorganization report to the legislature by January 1, 2024.

B. On July 1, 2023, statutory references to the human services department shall be deemed to be references to the health care authority department, and contractual obligations of the human services department shall be binding on the health care authority department. Rules of the human services department shall be the rules of the health care authority department until amended or repealed. As functions of government are transferred to the health care authority department as specified in Section 9-8-4 NMSA 1978, statutory references shall be deemed to be references to the health care authority department, contractual obligations shall be binding on the department and existing pertinent rules shall be the rules of the department until amended or repealed.

C. The department of finance and administration, the secretary of health care authority, the secretary of health, the secretary of general services, members of the governor's staff and other persons assigned by the governor shall develop a transition plan that includes:

(1) what units of the executive department shall be transferred to or from the health care authority department and working and final organizational charts for all affected units of the executive departments;

(2) how and when functions, personnel, money, appropriations, equipment, supplies and other property of the human services department, the department of health, the general services department and other units of the executive department shall be transferred to or from the health care authority department; and

(3) proposed statutory changes, including changes in Chapters 9, 10 and 24 NMSA 1978 and the creation of a new chapter of the NMSA 1978 to include sections of Chapters 9 and 24 NMSA 1978 and other provisions of law pertaining to health care purchasing and regulation.

The 2004 amendment, effective May 19, 2004, deleted the office of Indian affairs and the state agency on aging from the administratively attached agencies of the human resources department.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 41 Am. Jur. 2d Indians §§ 47 et seq.; 162 et seq.

9-8-9. Directors.

The secretary shall appoint with the approval of the governor "directors" of divisions established within the department and a director of communications. The positions so appointed are exempt from the Personnel Act [Chapter 10, Article 9 NMSA 1978].

History: 1978 Comp., § 9-8-9, enacted by Laws 1977, ch. 252, § 10; 1989, ch. 82, § 2; 2001, ch. 237, § 1.

ANNOTATIONS

Cross references. — For appointment of directors, *see* 9-8-6B(10) NMSA 1978.

The 2001 amendment, effective April 3, 2001, inserted "and a director of communications" at the end of the first sentence; and deleted "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" from the end of the subsection.

9-8-10. Bureaus; chiefs.

The secretary shall establish within each division such bureaus as the secretary deems necessary to carry out the provisions of the Health Care Authority Department Act. The secretary shall employ a chief to be administrative head of any such bureau. The chief and all subsidiary employees of the department shall be covered by the Personnel Act [Chapter 10, Article 9 NMSA 1978] 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; 2023, ch. 205, § 13.

ANNOTATIONS

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

For public assistance generally, *see* Chapter 27 NMSA 1978.

For human rights generally, *see* Chapter 28 NMSA 1978.

For delinquent, abused and neglected children, *see* 32A-2-1 to 32A-2-33 and 32A-4-1 to 32A-4-34 NMSA 1978.

For adoption generally, *see* 32A-5-1 to 32A-5-45 NMSA 1978.

For the Mandatory Medical Support Act, *see* 40-4C-1 NMSA 1978 et seq.

The 2023 amendment, effective June 16, 2023, after "provisions of the", deleted "Human Services" and added "Health Care Authority".

Temporary provisions. — Laws 2023, ch. 205, § 16 provided:

A. The governor may issue an executive order that further delineates the organizational structure, power and duties of the health care authority department and moves divisions and programs to or from other departments to accomplish the reorganizational goals of this act. The governor shall report the reorganizational changes and recommend statutory changes to the legislative health and human services committee and the legislative finance committee by November 1, 2023 and provide a final reorganization report to the legislature by January 1, 2024.

B. On July 1, 2023, statutory references to the human services department shall be deemed to be references to the health care authority department, and contractual obligations of the human services department shall be binding on the health care authority department. Rules of the human services department shall be the rules of the health care authority department until amended or repealed. As functions of government are transferred to the health care authority department as specified in Section 9-8-4 NMSA 1978, statutory references shall be deemed to be references to the health care authority department, contractual obligations shall be binding on the department and existing pertinent rules shall be the rules of the department until amended or repealed.

C. The department of finance and administration, the secretary of health care authority, the secretary of health, the secretary of general services, members of the governor's staff and other persons assigned by the governor shall develop a transition plan that includes:

(1) what units of the executive department shall be transferred to or from the health care authority department and working and final organizational charts for all affected units of the executive departments;

(2) how and when functions, personnel, money, appropriations, equipment, supplies and other property of the human services department, the department of health, the general services department and other units of the executive department shall be transferred to or from the health care authority department; and

(3) proposed statutory changes, including changes in Chapters 9, 10 and 24 NMSA 1978 and the creation of a new chapter of the NMSA 1978 to include sections of Chapters 9 and 24 NMSA 1978 and other provisions of law pertaining to health care purchasing and regulation.

9-8-11. Advisory committees.

A. The governor shall appoint advisory committees to the department's income support 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 program administered by the department, the governor shall comply with those 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 service 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; 2023, ch. 205, § 14.

ANNOTATIONS

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

For public assistance generally, *see* Chapter 27 NMSA 1978.

For human rights generally, *see* Chapter 28 NMSA 1978.

For delinquent, abused and neglected children, *see* 32A-2-1 to 32A-2-33 and 32A-4-1 to 32A-4-34 NMSA 1978.

For adoption generally, *see* 32A-5-1 to 32A-5-45 NMSA 1978.

For the Mandatory Medical Support Act, *see* 40-4C-1 NMSA 1978 et seq.

The 2023 amendment, effective June 16, 2023, in Subsection A, after "income support division", deleted "and the social services division", and after "funding for a particular", deleted "human services".

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 health care and 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 health care or 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 health care or 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 health care or 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; 2023, ch. 205, § 15.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, in Subsection A, added "health care and" preceding the first occurrence of "human services programs", and added "health care or" preceding the second occurrence of "human services programs"; and in Subsection B, added "health care or" preceding each occurrence of "human services program".

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. Repealed.

History: 1953 Comp., § 12-34-23, enacted by Laws 1977, ch. 252, § 15; 1981, ch. 171, § 9; 1987, ch. 31, § 1; 1992, ch. 57, § 17; 2007, ch. 46, § 7; 1978 Comp., § 9-8-13, repealed by Laws 2023, ch. 205, § 17.

ANNOTATIONS

Repeals. — Laws 2023, ch. 205, § 17 repealed 9-8-13 NMSA 1978, as enacted by Laws 1977, ch. 252, § 15, relating to authority to conduct social services, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

9-8-14. Repealed.

History: Laws 1987, ch. 31, § 4; repealed by Laws 2023, ch. 205, § 17.

ANNOTATIONS

Repeals. — Laws 2023, ch. 205, § 17 repealed 9-8-14 NMSA 1978, as enacted by Laws 1987, ch. 31, § 4, relating to responsibility, abuse or neglect, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

ARTICLE 9
Military Affairs

9-9-1. Short title.

This act [9-9-1 to 9-9-3 NMSA 1978] may be cited as the "Military Affairs Act".

History: 1978 Comp., § 9-9-1, enacted by Laws 1977, ch. 258, § 1.

ANNOTATIONS

Effective dates. — Laws 1977, ch. 258, § 16 made Laws 1977, ch. 258, § 1 effective March 31, 1978.

9-9-2. Purpose.

The purpose of the Military Affairs Act is to transfer to the adjutant general the administration of all laws and the exercise of all functions formerly exercised by the New Mexico department of civil air patrol.

History: 1978 Comp., § 9-9-2, enacted by Laws 1977, ch. 258, § 2.

ANNOTATIONS

Effective dates. — Laws 1977, ch. 258, § 16 made Laws 1977, ch. 258, § 2 effective March 31, 1978.

Cross references. — For civil air patrol division, *see* 20-7-1, NMSA 1978.

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 [Chapter 10, Article 9 NMSA 1978].

History: 1978 Comp., § 9-9-3, enacted by Laws 1977, ch. 258, § 4.

ANNOTATIONS

Effective dates. — Laws 1977, ch. 258, § 16 made Laws 1977, ch. 258, § 4 effective March 31, 1978.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

ARTICLE 10
Natural Resources Department (Repealed, Recompiled.)

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

ANNOTATIONS

Repeals. — Laws 1987, ch. 234, § 84 repealed 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 present comparable provisions, *see* 9-5A-1 to 9-5A-7 NMSA 1978.

9-10-10. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1987, ch. 234, § 82, effective July 1, 1987, recompiled 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 was compiled as 75-6-1 NMSA 1978.

9-10-11. Repealed.

ANNOTATIONS

Repeals. — Laws 1982, ch. 10, § 9, repealed 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.

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:

A. "department" means the taxation and revenue department created under the Taxation and Revenue Department Act; and

B. "secretary" means the secretary of taxation and revenue.

History: 1978 Comp., § 9-11-2, enacted by Laws 1977, ch. 249, § 2; 1995, ch. 31, § 1.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, substituted "taxation and revenue" for "the department" in Subsection B.

9-11-3. Purpose.

The purpose of the Taxation and Revenue Department Act 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, seven divisions as follows:

A. the audit and compliance division;

B. the property tax division;

C. the revenue processing division;

D. the tax fraud investigations division;

E. the motor vehicle division;

F. the administrative services division; and

G. the information technology division.

History: 1978 Comp., § 9-11-4, enacted by Laws 1977, ch. 249, § 4; 1986, ch. 20, § 122; 1987, ch. 268, § 3; 1998 (1st S.S.), ch. 10, § 2; 2005, ch. 110, § 6; 2015, ch. 125, § 1.

ANNOTATIONS

Cross references. — For taxation generally, *see* Chapter 7 NMSA 1978.

For tax administration, *see* 7-1-1 to 7-1-82 NMSA 1978.

For oil and gas taxation, *see* 7-29-1 to 7-34-9 NMSA 1978.

For property taxes, *see* 7-35-1 to 7-38-93 NMSA 1978.

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

For motor transportation division of department of public safety, *see* 9-19-4 NMSA 1978.

For motor transportation and motor vehicle laws falling under jurisdiction of the taxation and revenue department, *see* 65-1-1 to 66-8-141 NMSA 1978.

Repeals. — Laws 2015, ch. 125, § 2 repealed Laws 2005, ch. 108, § 5, effective June 19, 2015.

The 2015 amendment, effective June 19, 2015, added the tax fraud investigations division to the taxation and revenue department; in the introductory sentence of the section, after "limited to", deleted "six" and added "seven"; and added a new Subsection D and redesignated the succeeding subsections accordingly.

The 2005 amendment, effective June 17, 2005, deleted the former provision that the department shall consist of an administrative services division and four program divisions; and added the administrative services division and the information technology division.

The 1998 amendment, effective July 1, 1998, deleted former Subsection E, which read: "the motor transportation division.", and made minor related and stylistic changes.

Powers of the motor vehicle division. — By agreement, the motor vehicle division can designate motor transportation division inspectors to enforce the Motor Vehicle Code against noncommercial vehicles. 1992 Op. Att'y Gen. No. 92-02.

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

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

History: 1978 Comp., § 9-11-5, enacted by Laws 1977, ch. 249, § 6.

ANNOTATIONS

Effective dates. — Laws 1977, ch. 249, § 69 made Laws 1977, ch. 249, § 6 effective March 31, 1978.

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

For exemption of secretary from the Personnel Act, *see* 9-11-10 NMSA 1978.

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

9-11-6. Secretary; duties and general powers.

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

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

(1) except as otherwise provided in the Taxation and Revenue Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

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

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

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

(5) purchase or lease personal property, purchase services and lease real property for use by the department as the secretary deems necessary, subject to approval of state agencies if any is required;

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

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

(8) prepare an annual budget of the department;

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

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

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

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

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978]. Persons appointed to these positions shall serve at the pleasure of the secretary;

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

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

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

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

E. The secretary may adopt an official seal for the use of the department or any of its divisions.

History: 1978 Comp., § 9-11-6, enacted by Laws 1977, ch. 249, § 7; 1978, ch. 147, § 1; 1987, ch. 268, § 4; 1995, ch. 31, § 2.

ANNOTATIONS

Cross references. — For appointment of directors, *see* 9-11-8 NMSA 1978.

For applicability of the Personnel Act to department employees, *see* 9-11-10 NMSA 1978.

For state budgets, *see* 6-3-1 to 6-3-25 NMSA 1978.

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

The 1995 amendment, effective July 1, 1995, deleted provisions in Paragraph B(4) relating to reductions in staff by the secretary, deleted former Subsection E relating to adoption of procedural rules and regulations by the secretary, added Subsection E and made minor stylistic changes throughout the section.

No responsibility by state records center to determine compliance of promulgated rules with hearing and notice requirements. 1978 Op. Att'y Gen. No. 78-07.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 881 to 890.

Personal liability of public officer or sureties on his bond to property owner for failure to present or delay in presenting, checks given in payment of taxes, 77 A.L.R. 1034.

84 C.J.S. Taxation §§ 640 to 684.

9-11-6.1. Additional powers of secretary.

In addition to the powers granted to the secretary in Section 9-11-6 NMSA 1978, the secretary is authorized to set, by regulation, after notification to the legislative finance committee, fees to cover the expense of providing additional services for the convenience of the public. Any fee for a service adopted under this section shall not be charged to or payable by any person not taking advantage of the service. Amounts collected pursuant to this section are appropriated to the department to defray the expense of providing the service.

History: 1978 Comp., § 9-11-6.1, enacted by Laws 1990, ch. 70, § 1.

ANNOTATIONS

Effective dates. — Laws 1990, ch. 70 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 1990, 90 days after the adjournment of the legislature.

9-11-6.2. Administrative regulations, rulings, instructions and orders; presumption of correctness.

A. The secretary is empowered and directed to issue and file as required by law all regulations, rulings, instructions or orders necessary to implement and enforce any provision of any law the administration and enforcement of which the department, the secretary, any division of the department or any director of any division of the department is charged, including all rules and regulations necessary by reason of any alteration of any such law. In order to accomplish its purpose, this provision is to be liberally construed.

B. Directives issued by the secretary shall be in form substantially as follows:

(1) regulations shall be written statements of the secretary of general application, interpreting and exemplifying the statutes to which they relate;

(2) rulings shall be written statements of the secretary, of limited application to one or a small number of persons, interpreting the statutes to which they relate, ordinarily issued in response to a request for clarification of the consequences of a specified set of circumstances;

(3) orders shall be written statements of the secretary or delegate of the secretary to implement a decision after a hearing; and

(4) instructions shall be other written statements or directives of the secretary or secretary's delegate not dealing with the merits of any law but otherwise in aid of the accomplishment of the duties of the secretary.

C. To be effective, any ruling or regulation issued by the secretary shall be reviewed by the attorney general or other legal counsel of the department prior to being filed as required by law, and the fact of the review shall be indicated on the ruling or regulation.

D. To be effective, a regulation shall first be issued as a proposed regulation and filed for public inspection in the office of the secretary. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested parties may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published at least thirty days prior to the hearing date in the New Mexico register and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. After the proposed regulation has been on file for not less than sixty days and a public hearing on the proposed action has been held by the secretary or a hearing officer designated by the secretary, the secretary may issue it as a final regulation by signing the regulation and filing the regulation in the manner required by law. The secretary shall not delegate the authority to sign regulations.

E. In addition to filing copies of regulations with the state records administrator as required by law, the secretary shall maintain in the office of the secretary a duplicate official set of current and superseded regulations, a set of current and superseded rulings and such additional sets of those regulations and rulings as appear necessary, which duplicate or additional sets shall be available for inspection by the public, but superseded regulations need be maintained for no longer than ten years from the date of supersession.

F. The secretary shall develop and maintain a file of names and addresses of individuals and professional and industry groups having an interest in the promulgation of new, revised or proposed regulations. At convenient times, the secretary shall distribute to these persons all such regulations and all pertinent rulings, making such charges as will defray the expense incurred in their physical preparation and mailing. Such charges are appropriated to the department to defray the costs of preparing and distributing regulations and rulings.

G. Any regulation, ruling, instruction or order issued by the secretary or delegate of the secretary is presumed to be a proper implementation of the provisions of the laws that are charged to the department, the secretary, any division of the department or any director of any division of the department.

H. The extent to which regulations, rulings and orders will have retroactive effect shall be stated, and if no such statement is made, they will be applied prospectively only.

History: Laws 1995, ch. 31, § 3; 2015, ch. 73, § 23.

ANNOTATIONS

Cross references. — For state records center, *see* 14-3-8 NMSA 1978.

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

The 2015 amendment, effective July 1, 2015, amended the Taxation and Revenue Department Act by removing "hearing officers" from provisions that authorized the secretary or delegate of the secretary to issue administrative orders for the taxation and revenue department; in Subsection B, Paragraph (1), after "exemplifying the", changed "statues" to "statutes"; in Subsection B, Paragraph (3), after "statements of the secretary or", deleted "a hearing officer or other"; in Subsection D, after "prior to the hearing date in", deleted "a"; in Subsection E, after "state records", deleted "center" and added "administrator"; and in Subsection G, after "issued by the secretary or", deleted "order or instruction issued by a hearing officer or other".

Retroactive effect. — Whether or not a ruling has retroactive effect is limited to the effect of the ruling itself, and any failure to provide expressly for retroactivity does not change the law that was in effect prior to the ruling. *Amoco Prod. Co. v. Taxation & Revenue Dep't*, 2003-NMCA-092, 134 N.M. 162, 74 P.3d 96.

Judicial review of rulings. — The legislature has provided a comprehensive scheme for protesting department of revenue and county actions. In not providing more specifically for judicial review of a ruling, the legislative intent was that the ruling should be applied before it is reviewed, in the absence of some applicable exception. *Grand Lodge of Ancient & Accepted Masons v. Taxation & Revenue Dep't*, 1987-NMCA-081, 106 N.M. 179, 740 P.2d 1163, cert. denied, 106 N.M. 174, 740 P.2d 1158 (decided under prior law).

Director's (now secretary's) instructions to be in ordinary language. — To aid in the accomplishment of his duties, instructions issued by the director (now secretary) to every resident individual upon whom an income tax is imposed should be in ordinary, everyday language understood by the man or woman on the street. *Davis v. N.M. State Bureau of Revenue*, 1980-NMCA-153, 95 N.M. 218, 620 P.2d 376 (decided under prior law).

Director (now secretary) has authority to issue regulations interpreting and exemplifying statutes concerning the possession of nontaxable transaction certificates and he also has such authority as may be fairly implied from the statutory authorization. *Rainbo Baking Co. v. Commissioner of Revenue*, 1972-NMCA-139, 84 N.M. 303, 502 P.2d 406 (decided under prior law).

Presumption of validity overcome by showing regulation void. — A showing of a void time requirement established by a regulation of the commissioner (now secretary)

overcame the presumption of validity stated in former Section 7-1-5 NMSA 1978. *Rainbo Baking Co. v. Commissioner of Revenue*, 1972-NMCA-139, 84 N.M. 303, 502 P.2d 406 (decided under prior law).

Director (now secretary) reversed for arbitrariness. — Since the commissioner (now secretary), before arriving at a decision, did not consider all of the evidence presented at the hearing but only that pertaining to the "indicia" under G.R. Regulation 12.5:1, the court could not say that he would have reached the same conclusion had all of "the evidence presented and admitted" been considered as required by Section 7-1-24 NMSA 1978 and therefore held the ruling reversed for arbitrariness. *Eaton v. Bureau of Revenue*, 1972-NMCA-114, 84 N.M. 226, 501 P.2d 670, cert. denied, 84 N.M. 219, 501 P.2d 663 (decided under prior law).

Director (now secretary) is a state officer. *State ex rel. Bureau of Revenue v. MacPherson*, 1968-NMSC-106, 79 N.M. 272, 442 P.2d 584, *overruled by N.M. Livestock Bd. v. Dose*, 1980-NMSC-022, 94 N.M. 68, 607 P.2d 606 (decided under prior law).

9-11-6.3. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 176, § 2 repealed 9-11-6.3 NMSA 1978, as enacted by Laws 1995, ch. 31, § 4, relating to payment methods of any amount due the state under any law or program administered by the department, effective June 18, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 6-10-1.2 NMSA 1978.

9-11-6.4. Electronic filing and payment.

A. The department is authorized to require where practical, in lieu of:

(1) the filing of paper documents, the filing by electronic or optical means of any return, application, report or other document required under any law or program administered by the department; and

(2) a paper check or cash payment, the remittance by electronic means of any payment required under any law or program administered by the department.

B. The department, using reasonable criteria, may require some classes of persons to file returns and remit payments electronically or optically while not so requiring others to file returns and remit payments in that manner. The date of filing or payment shall be the date the return, application, report, payment or other document is transmitted to the department in a form able to be processed.

History: Laws 1995, ch. 31, § 5; 2021, ch. 65, § 37.

ANNOTATIONS

Cross references. — For electronic authentication and substitution for signature, *see* 14-3-15.2 NMSA 1978.

The 2021 amendment, effective July 1, 2021, authorized the taxation and revenue department to mandate electronic payment of certain taxes; in the section heading, added "and payment"; in Subsection A, added new paragraph designation "(1)" and Paragraph A(2); and in Subsection B, after "persons to file", added "returns and remit payments", after "requiring others to file", added "returns and remit payments", after "date of filing", added "or payment", and after "report", added "payment".

9-11-7. Repealed.

ANNOTATIONS

Repeals. — Laws 1986, ch. 20, § 136A repealed 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.

9-11-8. Division directors.

Each division in the department, whether established by law or order of the secretary, shall be headed by a "director." Directors shall be appointed by the secretary with the approval of the governor.

History: 1978 Comp., § 9-11-8, enacted by Laws 1977, ch. 249, § 9.

ANNOTATIONS

Effective dates. — Laws 1977, ch. 249, § 69 made Laws 1977, ch. 249, § 9 effective March 31, 1978.

Cross references. — For exemption of directors from the Personnel Act, *see* 9-11-6B(10), 9-11-10 NMSA 1978.

For appointment of directors, *see* 9-11-6B(10) NMSA 1978.

9-11-9. Bureaus as organizational units.

The divisions of the department may have established within them organizational units to be known as "bureaus". Bureaus shall be headed by a "chief" appointed by the secretary.

History: 1978 Comp., § 9-11-9, enacted by Laws 1977, ch. 249, § 10.

ANNOTATIONS

Effective dates. — Laws 1977, ch. 249, § 69 made Laws 1977, ch. 249, § 10 effective March 31, 1978.

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 [Chapter 10, Article 9 NMSA 1978]. The secretary is the appointing authority.

History: 1978 Comp., § 9-11-10, enacted by Laws 1977, ch. 249, § 11.

ANNOTATIONS

Effective dates. — Laws 1977, ch. 249, § 69 made Laws 1977, ch. 249, § 11 effective March 31, 1978.

9-11-10.1. Background investigations; duties; employees; condition of employment.

A. An employee of the department who has access to or who is assigned to perform work associated with driver's licenses shall submit to a background investigation as required by the secretary.

B. An applicant seeking employment with the department who may have access to or who may be assigned to perform work associated with driver's licenses shall submit to a background investigation as required by the secretary.

C. The secretary shall ensure that fingerprints as required for a national criminal history records search and state background investigation are provided by:

(1) an employee of the department who has access to or is assigned to perform work associated with driver's licenses; or

(2) an applicant seeking employment with the department who may have access to or who may be assigned to perform work associated with driver's licenses.

D. The information obtained in a background investigation shall be used only to determine if a person required to submit to a background investigation pursuant to this section has been convicted of a crime that has a direct impact on the ability of that person to meet federal requirements or to perform the specific duties assigned to that person. The secretary may determine not to continue to employ or not to initiate employment of a person whose criminal background investigation contains information that the person has been convicted of a crime that involved actions that:

(1) directly reflect on the person's ability to perform the specific duties of that person's position or proposed position; or

(2) would conflict with federal requirements.

E. Information obtained pursuant to a background investigation shall be confidential and shall only be used for determining the fitness of a person to remain or become employed with the department or to comply with federal requirements regarding employees who have access to or who may be assigned to perform work associated with driver's licenses.

History: Laws 2007, ch. 319, § 66.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 319 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

9-11-11. Legal adviser [advisor].

The attorney general is the legal adviser [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.

ANNOTATIONS

Effective dates. — Laws 1977, ch. 249, § 69 made Laws 1977, ch. 249, § 13 effective March 31, 1978.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

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.

ANNOTATIONS

Effective dates. — Laws 1988, ch. 24, § 10 made Laws 1988, ch. 24, § 1 effective January 1, 1989.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

9-11-12.1. Tribal cooperative agreements.

A. The secretary may enter into cooperative agreements with the Pueblos of Acoma, Cochiti, Jemez, Isleta, Laguna, Nambe, Picuris, Pojoaque, Sandia, San Felipe, San Ildefonso, San Juan, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia and Zuni; the Jicarilla Apache Nation; the Mescalero Apache Tribe; and the nineteen pueblos acting collectively for the exchange of information and the reciprocal, joint or common enforcement, administration, collection, remittance and audit of gross receipts tax and cannabis excise tax revenues of the party jurisdictions.

B. Money collected by the department on behalf of a tribe in accordance with an agreement entered into pursuant to this section is not money of this state and shall be collected and disbursed in accordance with the terms of the agreement, notwithstanding any other provision of law.

C. The secretary is empowered to promulgate such rules and to establish such procedures as the secretary deems appropriate for the collection and disbursement of funds due a tribe and for the receipt of money collected by a tribe for the account of this state under the terms of a cooperative agreement entered into under the authority of this section, including procedures for identification of taxpayers or transactions that are subject only to the taxing authority of the tribe, taxpayers or transactions that are subject only to the taxing authority of this state and taxpayers or transactions that are subject to the taxing authority of both party jurisdictions.

D. Nothing in an agreement entered into pursuant to this section shall be construed as authorizing this state or a tribe to tax a person or transaction that federal law prohibits that government from taxing, authorizing a state or tribal court to assert

jurisdiction over a person who is not otherwise subject to that court's jurisdiction or affecting any issue of the respective civil or criminal jurisdictions of this state or the tribe. Nothing in an agreement entered into pursuant to this section shall be construed as an assertion or an admission by either this state or a tribe that the taxes of one have precedence over the taxes of the other when a person or transaction is subject to the taxing authority of both governments. An agreement entered into pursuant to this section shall be construed solely as an agreement between the two party governments and shall not alter or affect the government-to-government relations between this state and any other tribe.

E. As used in this section:

(1) "tribal" means of or pertaining to a tribe; and

(2) "tribe" means an Indian nation, tribe or pueblo located entirely in New Mexico.

History: 1978 Comp., § 9-11-12.1, enacted by Laws 1997, ch. 64, § 1; 1999, ch. 223, § 1; 2000, ch. 62, § 2; 2001, ch. 42, § 2; 2003, ch. 414, § 2; 2021 (1st S.S.), ch. 4, § 54.

ANNOTATIONS

Cross references. — For credit on gross receipts tax paid to pueblos, *see* 7-9-88.1 NMSA 1978.

The 2021 (1st S.S.) amendment, effective June 29, 2021, authorized the secretary of taxation and revenue to enter into cooperative agreements with the nineteen Indian pueblos, individually or collectively, for the exchange of information and the reciprocal, joint or common enforcement, administration, collection, remittance and audit of the cannabis excise tax; in Subsection A, after "gross receipts tax", added "and cannabis excise tax".

The 2003 amendment, effective July 1, 2003, in the section heading, added "Tribal", deleted "with the pueblos of Isleta, Laguna, Nambe, Sandia, Santa Ana and Santa Clara"; rewrote Subsection A; substituted "other tribe" for "other Indian nation tribe or pueblo" at the end of Subsection D; deleted former Subsection E, concerning the local option gross receipts tax act, and added present Subsection E; and substituted "tribe" for "pueblo" throughout the section.

The 2001 amendment, effective July 1, 2001, substituted the present section heading for "Cooperative agreements with Santa Clara pueblo, Santa Ana pueblo, Laguna pueblo and Nambe pueblo" and substituted "with the Pueblos of Isleta, Laguna, Nambe, Sandia, Santa Ana and Santa Clara" for "with Santa Clara pueblo, Santa Ana pueblo, Laguna pueblo and Nambe pueblo" in Subsection A.

The 2000 amendment, effective July 1, 2000, inserted "and Nambe pueblo" in Subsection A and deleted "and regulations" following "such rules" in Subsection C.

The 1999 amendment, effective July 1, 1999, added "Santa Ana pueblo and Laguna pueblo" to the section heading, in Subsection A, substituted "Santa Clara pueblo, Santa Ana pueblo and Laguna pueblo for the exchange of information" for "Santa Clara pueblo and for the exchange of information"; in Subsections B, C, and D, substituted "the pueblo" for "Santa Clara pueblo"; in Subsection E, inserted "with Santa Clara pueblo" near the beginning.

9-11-12.2. Cooperative agreements with Navajo Nation.

A. The secretary may enter into cooperative agreements with the Navajo Nation for the exchange of information and the reciprocal, joint or common enforcement, administration, collection, remittance and audit of tax revenues of the party jurisdictions.

B. Money collected by the department on behalf of the Navajo Nation in accordance with an agreement entered into pursuant to this section is not money of this state and shall be collected and disbursed in accordance with the terms of the agreement, notwithstanding any other provision of law.

C. The secretary is empowered to promulgate such rules and to establish such procedures as the secretary deems appropriate for the collection and disbursement of funds due the Navajo Nation and for the receipt of money collected by the Navajo Nation for the account of this state under the terms of a cooperative agreement entered into under the authority of this section, including procedures for identification of taxpayers or transactions that are subject only to the taxing authority of the Navajo Nation, taxpayers or transactions that are subject only to the taxing authority of this state and taxpayers or transactions that are subject to the taxing authority of both party jurisdictions.

D. Nothing in an agreement entered into pursuant to this section shall be construed as authorizing this state or the Navajo Nation to tax persons or transactions that federal law prohibits that government from taxing, or as authorizing a state or tribal court to assert jurisdiction over persons who are not otherwise subject to that court's jurisdiction or as affecting any issue of the respective civil or criminal jurisdictions of this state or the Navajo Nation. Nothing in an agreement entered into pursuant to this section shall be construed as an assertion or an admission by either this state or the Navajo Nation that the taxes of one have precedence over the taxes of the other when the person or transaction is subject to the taxing authority of both governments. An agreement entered into pursuant to this section shall be construed solely as an agreement between the two party governments and shall not alter or affect the government-to-government relations between this state and any other Indian nation, tribe or pueblo.

History: 1978 Comp., § 9-11-12.2, enacted by Laws 2001, ch. 134, § 3.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 134, § 4 made Laws 2001, ch. 134, § 3 effective July 1, 2001.

9-11-13. Taxation and revenue department; additional duties.

The taxation and revenue department shall develop and implement a program to conduct audits and related investigations with respect to royalties paid for oil and gas and other minerals produced from federal lands within New Mexico. Pursuant to the Federal Oil and Gas Royalty Management Act of 1982, the secretary of taxation and revenue shall petition the secretary of the United States department of the interior for a delegation of authority to conduct the audits and related investigations. After the delegation of authority is made, the secretary of taxation and revenue shall seek reimbursement from the United States department of the interior for all costs associated with any activities undertaken pursuant to the delegation.

History: Laws 1993, ch. 88, § 1.

ANNOTATIONS

Emergency clauses. — Laws 1993, ch. 88, § 3 contained an emergency clause and was approved March 31, 1993.

Cross references. — For the Federal Oil and Gas Royalty Management Act of 1982, *see* 30 U.S.C. § 1701 et seq.

9-11-14. Power to employ law enforcement officers for tax fraud investigations division.

A. The secretary shall employ police officers as commissioned tax fraud enforcement officers as needed in the tax fraud investigations division of the department to enforce the tax laws or to investigate fraud and other crimes that may affect the collection of taxes due to the state.

B. Tax fraud enforcement officers shall be certified as having completed basic law enforcement training at the New Mexico law enforcement academy or at another recognized certified regional or federal law enforcement training program equivalent to or more stringent than the basic law enforcement training at the New Mexico law enforcement academy.

C. The secretary may require specialized training in addition to the requirements of Subsection B of this section.

D. The secretary shall require continuing in-service law enforcement training for tax fraud enforcement officers as required by the New Mexico law enforcement academy for all police officers.

History: Laws 2005, ch. 108, § 6.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 108 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

9-11-15. Collection of delinquent obligations through collection agency.

The department, by competitive bid, may select one or more collection agencies to collect or assist in the collection of an obligation due to the state or a political subdivision of the state pursuant to a tax or law administered by the department, provided that the obligation is at least one hundred twenty days past due. Notwithstanding any contract for collection of an obligation entered into pursuant to this section, the department retains authority to settle an obligation or to accept payments on an obligation.

History: Laws 2006, ch. 40, § 1.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 40 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

ARTICLE 12
Transportation Department (Repealed.)

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

ANNOTATIONS

Repeals. — Laws 1985, ch. 49, § 1 and Laws 1987, ch. 268, § 43 repealed 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 present comparable provisions, *see* 9-11-4, 67-3-6 NMSA 1978.

ARTICLE 13
Employment Security Department (Repealed.)

9-13-1 to 9-13-7. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 342, § 34 repealed 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.

ARTICLE 14
Executive Planning

9-14-1. Short title.

Sections 1 through 7 [9-6-5.1, 9-14-1 to 9-14-3 NMSA 1978] of this act may be cited as the "Executive Planning Act".

History: Laws 1983, ch. 296, § 1.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 296, § 32 made Laws 1983, ch. 296, § 1 effective July 1, 1983.

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 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.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 296, § 32 made Laws 1983, ch. 296, § 2 effective July 1, 1983.

9-14-3. Governor's office of policy and planning created; powers and duties.

There is created in the office of the governor an 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 meetings 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.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 296, § 32 made Laws 1983, ch. 296, § 3 effective July 1, 1983.

9-14-4. Community development block grants.

A. The community development block grant programs shall be administered by the local government division of the department of finance and administration.

B. The New Mexico community development council shall determine the recipients and amounts of community development block grant awards.

History: Laws 1984, ch. 5, § 1.

ANNOTATIONS

Effective dates. — Laws 1984, ch. 5, § 18 made Laws 1984, ch. 5, § 1 effective July 1, 1984.

Repeals and reenactments. — Laws 1984, ch. 5, § 1, repealed former 9-14-4 NMSA 1978, as enacted by Laws 1983, ch. 296, § 4, and enacted the above section.

Cross references. — For the local government division of the department of finance and administration, *see* 6-6-2 NMSA 1978.

For the New Mexico community development council, *see* 11-6-4 NMSA 1978.

ARTICLE 15
Economic Development Department

9-15-1. Short title.

Sections 9-15-1 through 9-15-36 NMSA 1978 may be cited as the "Economic Development Department Act".

History: Laws 1983, ch. 297, § 1; 1988, ch. 81, § 1; 1991, ch. 21, § 9; 2020, ch. 65, § 2.

ANNOTATIONS

The 2020 amendment, effective May 20, 2020, after "through", deleted "9-15-15" and added "9-15-36".

Temporary provisions. — Laws 2020, ch. 65, § 6, provided that on May 20, 2020:

A. all functions, appropriations, money, records and files of the New Mexico youth conservation corps commission relating to the outdoor equity grant program shall be transferred to the New Mexico outdoor recreation division of the economic development department;

B. all contractual obligations of the New Mexico youth conservation corps commission relating to the outdoor equity grant program shall be binding on the New Mexico outdoor recreation division; and

C. the rules, orders and decisions of the New Mexico youth conservation corps commission relating to the outdoor equity grant program shall remain in effect until repealed or amended.

The 1991 amendment, effective March 27, 1991, deleted "and Tourism" following "Development".

9-15-2. Findings and purpose.

A. The legislature finds that a need exists for economic diversification in the state in order to protect against dramatic changes in the state's economy and to increase revenues to help state government finance the various services it provides to the state's communities and citizens.

B. The legislature further finds that the goal of economic development and diversification can best be accomplished by creating a cabinet-level department which will be concerned solely with the areas of economic development and diversification, business recruitment, expansion and retention.

C. The purpose of the Economic Development Department Act is to create a cabinet-level department in order to:

(1) provide a coordinated statewide perspective with regard to economic development activities;

(2) provide a data base for local and regional economic development groups and serve as a comprehensive source of information and assistance to businesses wishing to locate or expand in New Mexico;

(3) actively encourage new economic enterprises to locate in New Mexico and assist existing businesses to expand;

(4) monitor the progress of state-supported economic development activities and prepare annual reports of such activities, their status and their impact;

(5) create and encourage methods designed to provide rapid economic diversification development that will create new employment opportunities for the citizens of the state, including the issuance of grants and loans to municipalities and counties for economic enhancement projects;

(6) provide for technology commercialization projects as an incentive to industry locating or expanding in the state;

(7) support technology transfer programs;

(8) promote New Mexico as a technology conference center;

(9) promote and market federal and state technology commercialization programs;

(10) develop and implement enhanced statewide procurement programs; and

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

History: Laws 1983, ch. 297, § 2; 1991, ch. 21, § 10.

ANNOTATIONS

The 1991 amendment, effective March 27, 1991, in Subsection B, inserted "business recruitment, expansion" and substituted "retention" for "tourism promotion"; and, in Subsection C, deleted "and tourism" following "development" in four places, inserted "and loans" in Paragraph (5), substituted "technology commercialization" for "research and development" in Paragraph (6), rewrote Paragraph (7), which read "perform those functions previously exercised by the economic development division and board, the New Mexico magazine division and the tourism and travel division of the commerce and industry department", inserted present Paragraphs (8) to (10), redesignated former Paragraph (8) as present Paragraph (11) and substituted "and agricultural finance authorities" for "finance authority" in Paragraph (11).

9-15-3. Definitions.

As used in the Economic Development Department Act:

A. "commission" means the economic development commission;

B. "creative industry" means a business, organization or person engaged in creative enterprises, including performing, visual and literary arts; entertainment, media, information and broadcasting; applied arts and design, including architecture, landscape architecture, museum and gallery professions; promotion, marketing, graphics and industrial design; technology and computer system design, software design, coding and digital media; and crafts and artisan professions, including metal, wood, glass, ceramics, paper, printing, textile and culinary arts; "creative industry" does not mean a business, organization or person engaged in creative enterprises involving film;

C. "department" means the economic development department;

D. "film" means filming activity supported by the New Mexico film division of the department; and

E. "secretary" means the secretary of economic development.

History: Laws 1983, ch. 297, § 3; 1988, ch. 81, § 2; 1991, ch. 21, § 11; 1993, ch. 101, § 1; 2023, ch. 183, § 1.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, defined "creative industry" and "film" as used in the Economic Development Department Act; added a new Subsection B and redesignated former Subsection B as Subsection C; added a new Subsection D; and redesignated former Subsection C as Subsection E.

The 1993 amendment, effective June 18, 1993, deleted "and tourism" following "development" in Subsection A and, in Subsection C, deleted "department" following "development" and made a minor stylistic change.

The 1991 amendment, effective March 27, 1991, deleted "and Tourism" following "Development" in the introductory language and "and tourism" following "development" in Subsections A and B; deleted former Subsections C, E and F, which defined "research and development", "technical excellence" and "technological innovation", respectively; redesignated former Subsection D as present Subsection C; and, in Subsection C, substituted "the economic development department" for "economic development and tourism".

9-15-4. Department established.

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

A. the administrative services division;

B. the economic development division;

C. the New Mexico film division;

D. the technology enterprise division;

E. the trade and Mexican affairs division;

F. the New Mexico outdoor recreation division; and

G. the creative industries division.

History: Laws 1983, ch. 297, § 4; 1988, ch. 80, § 6; 1991, ch. 21, § 12; 1994, ch. 127, § 7; 1995, ch. 77, § 1; 1998, ch. 63, § 1; 2003, ch. 404, § 1; 2006, ch. 14, § 1; 2019, ch. 117, § 1; 2023, ch. 183, § 2.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, created the creative industries division in the economic development department; in the introductory paragraph, after "but not limited to", deleted "six" and added "seven"; and added Subsection G.

The 2019 amendment, effective July 1, 2019, created the New Mexico outdoor recreation division in the economic development department; in the introductory paragraph, after "limited to", deleted "five" and added "six"; and added Subsection F.

The 2006 amendment, effective May 17, 2006, changed the number of divisions from six to five divisions and deleted the space commercialization division.

Temporary provision. — Laws 2006, ch. 14, § 2 transferred the functions, personnel, appropriations, money, records, equipment, supplies and contractual obligations of the space commercialization division of the economic development department to the spaceport authority, 58-31-4 NMSA 1978.

The 2003 amendment, effective June 20, 2003, substituted "trade and Mexican affairs" for "trade" near the beginning of Subsection E; and in Subsection F deleted "office for" following "the" near the beginning and added "division" following "commercialization" at the end.

The 1998 amendment, effective July 1, 1998, substituted "six" for "seven" in the introductory language; added "and" at the end of Subsection E; deleted former Subsection F relating to the state housing authority, and redesignated Subsection G as Subsection F.

The 1995 amendment, effective April 5, 1995, in Subsection G, substituted "office for space commercialization" for "office of space".

The 1994 amendment, effective March 8, 1994, added Subsection G and made related changes.

The 1991 amendment, effective March 27, 1991, deleted " 'and tourism' " following " 'development' " in the first sentence; substituted "seven" for "six" in the second sentence; deleted former Subsections D and E, listing the New Mexico film and New Mexico magazine divisions; added present Subsections D and F; redesignated former Subsection F as present Subsection E; and made a related stylistic change.

9-15-4.1. Governor's council on film and media industries; created; membership; executive board.

A. The "governor's council on film and media industries" is created to advise the department and the governor on ways to promote film production in New Mexico, assist in the design and implementation of the department's strategic plan for building a media infrastructure in the state, assist in designing a workforce training program for film production and make recommendations for incentives and funding for these efforts.

B. The governor's council on film and media industries shall be composed of no more than thirty members appointed by the governor for four-year staggered terms; provided that the initial appointments shall be made so that one-half of the members shall be appointed for two-year terms and one-half of the members shall be appointed for four-year terms. Terms shall expire on January 1.

C. From the membership of the governor's council on film and media industries, the governor shall appoint a seven-member "executive board". At least five members of the executive board shall have experience in some aspect of film production. The executive board shall:

(1) with the approval of the secretary, create subcommittees of the governor's council on film and media industries and name the chairmen of those subcommittees;

(2) coordinate activities of the subcommittees and the governor's council on film and media industries; and

(3) develop recommendations pertaining to the charges of the governor's council on film and media industries for the consideration of the governor's council on film and media industries.

D. The governor shall name the chairman of the governor's council on film and media industries, who shall serve as the chairman of the executive board. The governor's council on film and media industries may elect such other officers as it deems necessary. The governor's council on film and media industries shall meet at the

call of the chairman, at least quarterly. Members of the governor's council on film and media industries may receive per diem and mileage for travel within New Mexico as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

E. Staff for the governor's council on film and media industries shall be provided by the department.

F. The governor's council on film and media industries shall report to the department, the governor and the legislature by December 1 of each year on its activities and recommendations.

History: Laws 2003, ch. 97, § 1; 2004, ch. 8, § 1.

ANNOTATIONS

The 2004 amendment, effective May 19, 2004, changed the name of the "film advisory board" to the "governor's council on film and media industries".

9-15-5. Secretary of the economic development department; appointment.

The chief executive and administrative officer of the department is the "secretary of economic development". The secretary shall be appointed by the governor with the consent of the senate. The secretary shall hold that office at the pleasure of the governor and shall serve in the executive cabinet; provided, however, that the secretary appointed to serve as the secretary of economic development and tourism and whose appointment has been confirmed by the senate may serve as the secretary of the economic development department at the pleasure of the governor and without further confirmation.

History: Laws 1983, ch. 297, § 5; 1991, ch. 21, § 13.

ANNOTATIONS

The 1991 amendment, effective March 27, 1991, substituted "the economic development department" for "economic development and tourism" in the catchline and the third sentence; deleted "and tourism" at the end of the first sentence; and substituted "appointed to serve as the secretary of economic development and tourism" for "currently appointed to the commerce and industry department" in the third sentence.

9-15-6. Secretary; duties and general powers.

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

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

(1) except as otherwise provided in the Economic Development Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

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

(3) organize the department into those organizational units he deems will enable it to function most efficiently;

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

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

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

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

(8) prepare an annual budget of the department based upon the five-year economic development plan approved by the commission. The economic development plan shall be updated and approved annually by the commission;

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

(a) minimize or eliminate duplication of services;

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

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

(10) appoint a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978]. Persons appointed to these positions shall serve at the pleasure of the secretary;

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

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

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

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

History: Laws 1983, ch. 297, § 6; 1988, ch. 81, § 3; 1991, ch. 21, § 14; 1993, ch. 101, § 2.

ANNOTATIONS

Cross references. — For the Border Development Act, *see* 58-27-1 NMSA 1978 et seq.

The 1993 amendment, effective June 18, 1993, deleted "and tourism" following both occurrences of "economic development" in Subsection B(8).

The 1991 amendment, effective March 27, 1991, in Subsection B, deleted "and Tourism" following "Department" in Paragraph (1), deleted "or actions" following "action" in Paragraph (5) and, in Paragraph (8), inserted "and tourism" in the first sentence and added the second sentence.

Classified personnel retain status upon transfer to successor department. — If classified personnel of the former commerce and industry department are transferred to the new economic development and tourism department, the personnel retain the same classified status and position that they held in the former department and are within the coverage of the Personnel Act. If a classified position is to become exempt from the provisions of the Personnel Act, then it must first become vacant. 1983 Op. Att'y Gen. No. 83-03 (rendered prior to 1991 amendment).

9-15-7. Secretary; additional duties.

In addition to the secretary's responsibility for the overall supervision of the department's operation in support of the purposes of the Economic Development Department Act, the secretary shall:

A. work with and provide staff support to the commission in formulating and implementing the state's five-year economic development plan;

B. advise the commission of proposed rules, regulations, projects and contractual arrangements;

C. enter into contracts with state, federal or private entities, apply for and accept any state, federal or private funds or grants for such projects and accept similar donations and bequests from any source;

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

E. develop, maintain and provide economic and demographic information; and

F. perform such other duties as requested by the commission in order to further the purposes of the Economic Development Department Act.

History: Laws 1983, ch. 297, § 7; 1988, ch. 81, § 4; 1991, ch. 21, § 15; 1993, ch. 101, § 3.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, deleted "and tourism" following "development" in Subsection A.

The 1991 amendment, effective March 27, 1991, deleted "and Tourism" following "Development" in the introductory paragraph and in Subsection F and, in Subsection A, substituted "the state's five-year" for "short-and long-term statewide" and "plan" for "programs".

9-15-7.1. Additional planning duties of secretary.

The secretary, in addition to other duties, shall serve as lead agency in coordination of the census program at the state data center.

History: Laws 1983, ch. 296, § 21; 1991, ch. 21, § 16; 1998, ch. 63, § 2.

ANNOTATIONS

The 1998 amendment, effective July 1, 1998, deleted "of the economic development department" from the section heading and rewrote this section to the extent that a detailed comparison is impracticable.

The 1991 amendment, effective March 27, 1991, substituted "the economic development" for "commerce and industry" in the catchline and for "the commerce and industry" in the introductory paragraph.

9-15-8, 9-15-9. Repealed.

ANNOTATIONS

Repeals. — Laws 1988, ch. 81, § 13 repealed 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.

9-15-10. Organizational units of department; powers and duties specified by law; access to information.

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, and he shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 9-15-6 NMSA 1978. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own

organizational units, not specifically held confidential by law. Any information obtained by the department that is proprietary technical information or related to the possible relocation or expansion of a business shall be deemed confidential and withheld from inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

History: Laws 1983, ch. 297, § 10; 1991, ch. 21, § 17; 1997, ch. 169, § 1.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, added the last sentence.

The 1991 amendment, effective March 27, 1991, substituted "9-15-6 NMSA 1978" for "6 of the Economic Development and Tourism Department Act" at the end of the second sentence.

9-15-11. Economic development commission created; membership; duties.

A. The "economic development commission" is created. The commission shall be a planning commission administratively attached to the department.

B. The commission shall:

(1) provide advice to the department on policy matters;

(2) oversee the economic development grant program as provided in the Economic Development Grant Act [6-31-1 to 6-31-6 NMSA 1978];

(3) review and approve applications for matching grants and award grants pursuant to the Economic Development Grant Act; and

(4) be responsible for the annual approval and update of the state's five-year economic development plan.

C. The commission shall consist of nine members who shall be qualified electors of the state, no more than five of whom at the time of appointment are members of the same political party. Members shall be appointed by the governor and confirmed by the senate. Seven members shall be appointed from their respective planning districts, the eighth member shall be a Native American and represent the interests of the Indian tribes and pueblos and the ninth member shall represent the public at large.

D. Appointments shall be made for five-year terms expiring on January 1 of the appropriate year. Commission members shall serve staggered terms as determined by the governor at the time of their initial appointment. Annually, the governor shall designate a chair of the commission from among the members.

E. The commission shall meet at the call of the chair, 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.

F. Commission members shall not vote by proxy. A majority of the members constitutes a quorum for the conduct of business.

G. Members of the commission shall not be removed except for incompetence, neglect of duty or malfeasance in office; provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given the member being removed. The senate shall be given exclusive original jurisdiction over proceedings to remove members of the commission under such rules as the senate may promulgate. The senate's decision in connection with such matters shall be final. A vacancy in the membership of the commission occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

H. Commission members shall not be paid, but they are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: 1978 Comp., § 9-15-11, enacted by Laws 1988, ch. 81, § 5; 1991, ch. 21, § 18; 1993, ch. 101, § 4; 1997, ch. 172, § 1; 2014, ch. 58, § 7.

ANNOTATIONS

Repeals and reenactments. — Laws 1988, ch. 81, § 5 repealed former 9-15-11 NMSA 1978, as amended by Laws 1987, ch. 112, § 1, and enacted a new 9-15-11 NMSA 1978, effective May 18, 1988.

The 2014 amendment, effective March 10, 2014, required the commission to oversee the economic development grant program and approve applications for matching grants; in the catchline, after "membership", deleted "administratively attached to the department" and added "duties"; in Subsection B, Paragraph (1), after "policy matters", deleted "The commission shall"; in Subsection B, added Paragraph (2); in Subsection C, in the first sentence, after "same political party", deleted "and at least one of whom shall be a Native American"; and in Subsection H, after "not be paid, but", deleted "shall" and added "they are entitled to".

The 1997 amendment, effective June 20, 1997, in Subsection A, substituted "nine members" for "seven members" and "five of whom" for "four of whom" in the fourth sentence, deleted three sentences relating to the appointment of two members from each of the three congressional districts and the appointment and duties of the governor's science advisor, added the last sentence, and made stylistic changes; and

substituted "five-year terms" for "seven-year terms" in the first sentence of Subsection B.

The 1993 amendment, effective June 18, 1993, in Subsection A, deleted "and tourism" following "economic development" in the first and fourth sentences, deleted "and the tourism department" following "department" in the second sentence, substituted "seven" for "nine" and "four" for "five" in the fifth sentence, deleted the former seventh sentence, which read "Two members shall be appointed from the state at large", substituted "seventh" for "ninth" in the eighth sentence, and added the last sentence; and, in Subsection E, in the third sentence, deleted "state" preceding "senate" and deleted "of New Mexico" following "senate."

The 1991 amendment, effective March 27, 1991, in Subsection A, inserted "economic development department and the tourism" in the second sentence, substituted "state's" for "department's" in the fourth sentence, "nine members" for "seven members" and "five of whom" for "four of whom" in the fifth sentence and "Two members" for "A seventh member" at the beginning of the eighth sentence and added the last two sentences; and, in Subsection E, substituted "commission" for "board" in the third sentence and for "committee" in the last sentence.

9-15-12. Commission; powers and duties.

The commission shall:

A. develop and recommend policies and provide policy and program guidance for the department;

B. review, modify and approve annual updates to the state's five-year economic development plan generated by the department;

C. advise, assist and promote the department on matters relating to technology, technology-based new business development and technology commercialization projects;

D. review federal technology-based programs requiring state matching funds and authorize any expenditure or pledge of the state match fund for such programs; and

E. establish such rules and regulations for its own operations as are necessary to achieve the purposes of the Economic Development Department Act. Rules and regulations of the commission shall be adopted in the same procedural manner as rules and regulations of the department are adopted and shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: Laws 1983, ch. 297, § 12; 1988, ch. 81, § 6; 1991, ch. 21, § 19; 1993, ch. 101, § 5; 1994, ch. 113, § 1.

ANNOTATIONS

Cross references. — For state matching funds, *see* 9-15-19.1 NMSA 1978.

The 1994 amendment, effective May 18, 1994, deleted "economic development" preceding "department" in Subsection A; added "and" at the end of Subsection C; added present Subsection D; and redesignated former Subsection D as present Subsection E.

The 1993 amendment, effective June 18, 1993, deleted "and the tourism department" following "department" at the end of Subsection A, deleted "and tourism" following "development" in Subsection B, and, in Subsection D, deleted "and the Tourism Department Act" following "Act" at the end of the first sentence and made a minor stylistic change in the second sentence.

The 1991 amendment, effective March 27, 1991, inserted "economic development department and the tourism" in Subsection A; deleted former Subsection B, which read "assist and promote research and development projects in the state"; redesignated former Subsection C as present Subsection B and inserted "state's" therein; inserted present Subsection C; and, in Subsection D, deleted "and Tourism" following "Development" and added "and the Tourism Department Act" in the first sentence and substituted "departments" for "department" in the second sentence.

9-15-12.1 to 9-15-13. Repealed.

ANNOTATIONS

Repeals. — Laws 1991, ch. 21, § 46 repealed 9-15-12.1, 9-15-12.2, 9-15-13 NMSA 1978, as enacted by Laws 1988, ch. 81, §§ 7 and 8 and as amended by Laws 1988, ch. 81, § 9, relating to creation of the business development board, tourism board, and science and technology commercialization commission, respectively, effective March 27, 1991. For provisions of former sections, *see* the 1990 NMSA 1978 on *NMOneSource.com.*

Laws 1991, ch. 230, § 1 also repealed 9-15-12.1 and 9-15-12.2 NMSA 1978, effective June 14, 1991.

9-15-14. Administrative services division; duties.

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

(1) keeping all official records of the department;

(2) providing personnel administration, financial management, procurement and budget preparation services; and

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

B. The division shall, in addition to its other duties, administer programs and grants that have been assigned generally to the department by the governor or the commission or by statute.

History: Laws 1983, ch. 297, § 14; 1988, ch. 81, § 10; 1991, ch. 21, § 20; 1995, ch. 163, § 1.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, deleted Subsection C and made a minor stylistic change in Subsection B.

The 1991 amendment, effective March 27, 1991, added Subsection C.

9-15-14.1. New Mexico outdoor recreation division; duties; definitions.

A. The New Mexico outdoor recreation division of the department shall:

(1) increase outdoor recreation-based economic development, tourism and ecotourism in the state;

(2) recruit out-of-state-based outdoor recreation businesses to locate in New Mexico;

(3) promote stewardship and preservation of New Mexico's unique environment and cultural assets;

(4) promote education about and use of outdoor recreation assets to enhance public health; and

(5) administer the outdoor equity grant program.

B. The department, the tourism department, the state land office, the Rio Grande trail commission, the state parks division of the energy, minerals and natural resources department, the department of game and fish, the cultural affairs department, the Indian affairs department, the department of health and the department of transportation shall work in conjunction with the New Mexico outdoor recreation division to support the division's duties as they relate to the purposes of the respective departments and agencies.

C. For the purposes of administering functions of the New Mexico outdoor recreation division:

(1) "ecotourism" means a form of tourism that involves visiting areas of ecological interest and is intended as a low-impact and often small-scale alternative to standard commercial tourism; and

(2) "outdoor recreation" means a recreational activity that occurs outdoors in a natural environment, including the use of trails, the natural landscape, water or snow resources or other natural resources in the activity.

History: Laws 2019, ch. 117, § 2; 2020, ch. 65, § 3.

ANNOTATIONS

The 2020 amendment, effective May 20, 2020, required the New Mexico outdoor recreation division to administer the outdoor equity grant program; in the section heading, deleted "director" and added "definitions"; in Subsection A, added Paragraph A(5); and in Subsection C, in the introductory clause, after "For the purposes of", deleted "this section" and added "administering functions of the New Mexico outdoor recreation division".

Temporary provisions. — Laws 2020, ch. 65, § 6, provided that on May 20, 2020:

A. all functions, appropriations, money, records and files of the New Mexico youth conservation corps commission relating to the outdoor equity grant program shall be transferred to the New Mexico outdoor recreation division of the economic development department;

B. all contractual obligations of the New Mexico youth conservation corps commission relating to the outdoor equity grant program shall be binding on the New Mexico outdoor recreation division; and

C. the rules, orders and decisions of the New Mexico youth conservation corps commission relating to the outdoor equity grant program shall remain in effect until repealed or amended.

9-15-14.2. Outdoor recreation advisory committee; creation; membership; duties.

A. The "outdoor recreation advisory committee" is created and administratively attached to the New Mexico outdoor recreation division of the department. The director of the New Mexico outdoor recreation division, or the director's designee, shall serve as the chair of the committee.

B. The outdoor recreation advisory committee shall be composed of no more than fifteen members appointed by the director of the New Mexico outdoor recreation division. The members of the committee shall include representatives of the outdoor recreation industry, the tourism department, the cultural affairs department, the energy,

minerals and natural resources department, the state parks division of the energy, minerals and natural resources department, the department of game and fish and the Indian affairs department.

C. The members shall serve at the pleasure of the director.

D. Staff and other administrative support for the outdoor recreation advisory committee shall be provided by the administrative services division of the department.

E. Members of the outdoor recreation advisory committee are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] but shall receive no other perquisite, compensation or allowance.

History: Laws 2019, ch. 117, § 3.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 117, § 9 made Laws 2019, ch. 117 effective July 1, 2019.

9-15-14.3. New Mexico outdoor recreation division; special projects and outdoor recreation infrastructure fund; created.

The "special projects and outdoor recreation infrastructure fund" is created in the state treasury. The fund consists of appropriations, gifts, grants, donations, income from investment of the fund and money otherwise accruing to the fund. Money in the fund at the end of a fiscal year shall not revert to any other fund. The fund shall be administered by the New Mexico outdoor recreation division, and money in the fund is appropriated to the New Mexico outdoor recreation division for special projects and outdoor recreation infrastructure determined by the division to be necessary to carry out the purpose of the division. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the director of the New Mexico outdoor recreation division or the director's designee.

History: Laws 2019, ch. 117, § 4.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 117, § 9 made Laws 2019, ch. 117 effective July 1, 2019.

9-15-14.4. Outdoor equity grant program; created; administration; grant criteria.

A. The "outdoor equity grant program" is created in the department to be administered by the New Mexico outdoor recreation division of the department.

B. Each fiscal year, competitive grants shall be awarded to applicants for the sole purpose of funding outdoor recreation programs, in whole or in part, for youth up to the age of eighteen.

C. Political subdivisions of the state, Indian nations, tribes and pueblos and nonprofit organizations may apply for outdoor equity grants.

D. Annually, the New Mexico outdoor recreation division shall establish a minimum and maximum number of grants available based on the funding appropriated to the outdoor equity grant program fund for that fiscal year.

E. The New Mexico outdoor recreation division shall award grants to applicants through a competitive process and based upon the following minimum criteria:

(1) at least forty percent of the population served by the applicant are low-income youth up to the age of eighteen;

(2) the applicant has a well-developed, written plan to engage low-income youth in outdoor recreation activities; and

(3) the applicant has an educational plan to educate youth about climate and the environment as part of its outdoor recreation program.

F. The New Mexico outdoor recreation division shall establish grant reporting requirements that meet the general purpose of this section.

History: Laws 2019, ch. 117, § 7; § 9-5B-10.1 recompiled and amended as § 9-15-14.4 by Laws 2020, ch. 65, § 4.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 65, § 4 recompiled and amended former 9-5B-10.1 NMSA 1978 as 9-15-14.4 NMSA 1978, effective May 20, 2020.

The 2020 amendment, effective May 20, 2020, required the New Mexico outdoor recreation division to administer the outdoor equity grant program, authorized political subdivisions of the state, Indian nations, tribes and pueblos to apply for outdoor equity grants, and removed certain definitions as used in this section; in Subsection A, after "administered by the", deleted "commission" and added "New Mexico outdoor recreation division of the department"; added a new Subsection C and redesignated former Subsections C through E as Subsections D through F, respectively; in Subsection D, after "Annually, the", deleted "commission" and added "New Mexico outdoor recreation division"; in Subsections E and F, deleted "commission" and added

"New Mexico outdoor recreation division"; and deleted former Subsection F, which defined "applicant" and "outdoor recreation".

9-15-14.5. Outdoor equity grant program fund; created.

A. The "outdoor equity grant program fund" is created in the state treasury. All appropriations, gifts, devises, grants and donations received shall be deposited in the fund. Money in the fund is appropriated to the department for the New Mexico outdoor recreation division to carry out the outdoor equity grant program. Any money appropriated to the fund or accruing to it through gifts, grants, bequests or interest shall remain in the fund. Money in the fund shall not revert at the end of a fiscal year.

B. The fund shall be administered by the department. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of economic development or the secretary's designee for the purpose of carrying out the outdoor equity grant program.

History: Laws 2019, ch. 117, § 8; § 9-5B-10.2 recompiled and amended as § 9-15-14.5 by Laws 2020, ch. 65, § 5.

ANNOTATIONS

Recompilations. — Laws 2020, ch. 65, § 5 recompiled and amended former 9-5B-10.2 NMSA 1978 as 9-15-14.5 NMSA 1978, effective May 20, 2020.

The 2020 amendment, effective May 20, 2020, required that all appropriations to the outdoor equity grant program fund shall be appropriated to the economic development department for the New Mexico outdoor recreation division to carry out the outdoor equity grant program; in Subsection A, after "appropriated to the", deleted "commission for the purpose of carrying out the" and added "department for the New Mexico outdoor recreation division to carry out the", and after "outdoor equity grant program", deleted "pursuant to the provisions of the New Mexico Youth Conservation Corps Act"; and in Subsection B, after "signed by the", deleted "chair of the commission" and added "secretary of economic development", and after "outdoor equity grant program", deleted "pursuant to the provisions of the New Mexico Youth Conservation Corps Act".

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 marketing the benefits of local communities by providing matching funds through the state cooperative advertising program, which shall include as eligible expenses travel and related costs to attract new business investment into the communities;

F. assisting in the establishment of programs to attract new labor forces or to train local labor forces; and

G. identifying barriers to local or regional economic development and developing plans to overcome such barriers.

History: Laws 1983, ch. 297, § 15; 2003, ch. 15, § 1.

ANNOTATIONS

Cross references. — For the Local Economic Development Act, *see* 5-10-1 NMSA 1978 et seq.

The 2003 amendment, effective June 20, 2003, inserted present Subsection E and redesignated the subsequent subsections accordingly; and substituted "to train" for "training" preceding "local labor forces" near the end of Subsection F.

9-15-15.1. Creative industries division; purpose; duties.

A. The creative industries division shall:

(1) increase and advance creative industry-based economic development in New Mexico;

(2) support entrepreneurs and small businesses in creative industries;

(3) assist organizations that support creative industry companies and workers;

(4) support educational and workforce training initiatives that facilitate creative industry growth and success;

(5) identify and help establish public infrastructure to support creative industries;

(6) serve as an information clearinghouse by providing resources and opportunities to creative industry stakeholders; and

(7) act as a liaison between creative-industries-related businesses and organizations.

B. The creative industries division shall work with the department, the cultural affairs department, the Indian affairs department, the higher education department, the public education department, the tourism department and the workforce solutions department to support the division's duties as they relate to the purposes of the respective departments.

History: Laws 2023, ch. 183, § 3.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 183, § 5 made Laws 2023, ch. 183, § 3 effective July 1, 2023.

9-15-15.2. Creative industries fund; created.

A. The "creative industries fund" is created in the state treasury. The fund consists of appropriations, gifts, grants, donations, income from investment of the fund and money otherwise accruing to the fund. Money in the fund at the end of a fiscal year shall not revert to any other fund. The fund shall be administered by the department, and expenditures from the fund shall be by warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of economic development.

B. Money in the creative industries fund is appropriated to the department for administration by the creative industries division to provide for grants for projects or programs that promote the growth of creative industries pursuant to the criteria listed in Subsection C of this section; provided that fifty percent of the money from the fund shall be awarded to projects or programs in rural or underserved communities as defined by the division by rule.

C. Grants from the creative industries fund shall be awarded through a competitive process in which the project or program demonstrates the potential to stimulate community or economic development through creative industries and demonstrates or supports one or more of the following:

(1) broad local support, including in-kind or financial support from local governments and surrounding communities or neighborhoods;

(2) assistance to small businesses with fewer than ten employees;

(3) expansion of existing creative industries; or

(4) the promotion of inclusion and diversity.

D. Grants may be awarded to a county, municipality or other political subdivision of the state; an Indian nation, tribe or pueblo; and for-profit and nonprofit organizations.

History: Laws 2023, ch. 183, § 4.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 183, § 5 made Laws 2023, ch. 183, § 4 effective July 1, 2023.

9-15-16. Technology enterprise division created.

The "technology enterprise division" is created as a division of the economic development department. The division shall:

A. enhance the business climate to encourage the start-up, relocation, development and growth of technology-based industry in New Mexico;

B. promote an expanded, diversified technology-based economy, emphasizing areas that:

(1) derive from the state's technological strengths;

(2) provide a commercial advantage;

(3) lend themselves to a distributed technology-based industry network; and

(4) utilize imaginative state, federal and private partnerships; and

C. attain sufficient levels of human, financial and physical resources to support in-state industries and attract new industries to New Mexico.

History: 1978 Comp., § 9-15-16, enacted by Laws 1991, ch. 21, § 21.

ANNOTATIONS

Emergency clauses. — Laws 1991, ch. 21, § 47 contained an emergency clause and was approved March 27, 1991.

Repeals and reenactments. — Laws 1991, ch. 21, § 21 repealed former 9-15-16 NMSA 1978, as amended by Laws 1988, ch. 88, § 11, relating to short title of the Research and Development Act, and enacted a new section, effective March 27, 1991.

9-15-17. Director; duties.

The director of the technology enterprise division is responsible for the overall supervision of the division in accordance with the provisions of Section 9-15-16 NMSA 1978. In addition, the director shall:

A. formulate and submit to the commission a five-year state technology development plan;

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

C. develop agreements with federal research, development, testing and evaluating organizations and universities to facilitate the transfer and commercialization of technology;

D. recommend to the secretary proposed projects and contracts in accordance with the policies, procedures and guidelines established by the department;

E. subject to the approval of the secretary, apply for and accept any federal funds or grants and private donations;

F. develop requests for proposals in technology commercialization areas given priority by the commission in the state's economic development and tourism plan; receive and refer with commentary to the secretary proposals submitted in response to requests for proposals; confer with research investigators to assist them when needed; monitor progress on state-funded research and development projects; maintain contact with research and development offices of the universities, federal laboratories and private research operations; and receive reports of individual projects;

G. prepare an annual report on:

(1) the status of the technology enterprise division;

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

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

(4) other activities of the division;

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

I. request from each entity under contract with the division a detailed description of tasks and associated budgets for review and approval by the commission; and

J. perform such other duties as are assigned to him by the secretary in order to further the purposes of Section 9-15-17 NMSA 1978.

History: 1978 Comp., § 9-15-17, enacted by Laws 1991, ch. 21, § 22.

ANNOTATIONS

Emergency clauses. — Laws 1991, ch. 21, § 47 contained an emergency clause and was approved March 27, 1991.

Repeals and reenactments. — Laws 1991, ch. 21, § 22 repealed former 9-15-17 NMSA 1978, as amended by Laws 1987, ch. 161, § 2, relating to findings and purpose of the Research and Development Act, and enacted a new section, effective March 27, 1991.

9-15-18. Proprietary information.

A. Any information obtained by the technology enterprise division that is deemed by the director to be proprietary technical or business information shall be held in confidence. Proprietary technical or business information shall not be deemed a public record under the Public Records Act [Chapter 14, Article 3 NMSA 1978] or be open to inspection under Section 14-2-1 NMSA 1978. The technology enterprise division shall take such steps as are necessary to safeguard the confidentiality of the information.

B. Notwithstanding Sections 10-15-1 through 10-15-4 NMSA 1978 or any other law requiring meetings of public bodies to be open to the public, meetings of the commission shall be closed when proprietary technical or business information is discussed.

History: 1978 Comp., § 9-15-18, enacted by Laws 1991, ch. 21, § 23.

ANNOTATIONS

Emergency clauses. — Laws 1991, ch. 21, § 47 contained an emergency clause and was approved March 27, 1991.

Repeals and reenactments. — Laws 1991, ch. 21, § 23 repealed former 9-15-18 NMSA 1978, as amended by Laws 1988, ch. 81, § 12, relating to definitions in the Research and Development Act, and enacted a new section, effective March 27, 1991.

9-15-19. Technology enterprise fund created.

There is created in the state treasury the "technology enterprise fund". No money appropriated to this fund or accruing to it through cooperative research and technology transfer agreements, gifts, grants or bequests shall be transferred to another fund or encumbered or disbursed in any manner except for activities conducted pursuant to

Sections 9-15-16 through 9-15-19 NMSA 1978. The fund shall not revert at the end of a fiscal year. Money appropriated to the research and development fund is appropriated to the technology enterprise fund provided any existing agreement to be paid from funds appropriated to the research and development fund shall be paid from the technology enterprise fund. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary or his designee for the purpose of paying the cost of activities conducted pursuant to Sections 9-15-16 through 9-15-19 NMSA 1978.

History: 1978 Comp., § 9-15-19, enacted by Laws 1991, ch. 21, § 24.

ANNOTATIONS

Repeals and reenactments. — Laws 1991, ch. 21, § 24 repealed former 9-15-19 NMSA 1978, as enacted by Laws 1986, ch. 38, § 4, relating to creation of New Mexico research and development institute, and enacted a new section, effective March 27, 1991.

9-15-19.1. State match fund created.

A. The "state match fund" is created in the state treasury. Money in the fund is appropriated to the economic development department for the purpose of providing a pool of matching funds for technology-based proposals submitted to the federal government on behalf of the state. Money in the fund shall only be expended upon review and approval of the economic development commission.

B. No money in the fund appropriated to it or accruing to it in any manner shall be transferred to another fund or encumbered or dispersed in any manner except for the purposes set forth in this section; provided, money in the fund may be invested by the state treasurer in the manner provided for other state funds. Money in the fund shall revert at the end of the fiscal year.

C. Disbursements from the fund shall only be made upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of economic development or his designee.

History: 1978 Comp., § 9-15-19.1, enacted by Laws 1994, ch. 113, § 2.

ANNOTATIONS

Effective dates. — Laws 1994, ch. 113 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 1994, 90 days after the adjournment of the legislature.

9-15-19.2. New Mexico 9000 program enterprise fund; created; purpose.

The "New Mexico 9000 program enterprise fund" is created in the state treasury. The fund consists of fees paid by participants for the New Mexico 9000 program, appropriations, gifts, grants and donations. Interest earned on balances in the fund shall be credited to the fund. Money in the fund at the end of a fiscal year shall not revert to the general fund. The economic development department shall administer the fund, and money in the fund is appropriated to the economic development department for the purpose of implementing and maintaining the New Mexico 9000 program. The fund is to be used for expenses associated with the delivery of training, auditing and certification, as well as expenses associated with administering the program and supporting participating New Mexico businesses in obtaining and maintaining international organization for standardization certification. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of economic development or the secretary of economic development's designee.

History: Laws 2011, ch. 79, § 1.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 79 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

9-15-20. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 101, § 12 repealed 9-15-20 NMSA 1978, as amended by Laws 1987, ch. 161, § 3, relating to duties of the economic development and tourism commission, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

9-15-21 to 9-15-27. Repealed.

ANNOTATIONS

Repeals. — Laws 1991, ch. 21, § 46 repealed 9-15-21 to 9-15-27 NMSA 1978, as enacted by Laws 1986, ch. 38, §§ 6, 9 and 10, Laws 1987, ch. 161, § 5, Laws 1988, ch. 80, § 1 and as amended by Laws 1987, ch. 161, § 4, and Laws 1989, ch. 324, § 3, relating to technical advisory committee, duties of director, research and development fund, proprietary information, exemption from the Personnel Act, contractual relationships with existing entities, and short title of the New Mexico Trade Promotion Act, respectively, effective March 27, 1991. For provisions of former sections, *see* the 1990 NMSA 1978 on *NMOneSource.com.*

9-15-28. Repealed.

History: Laws 1988, ch. 80, § 2; 1991, ch. 21, § 25; repealed by Laws 2003, ch. 404, § 4.

ANNOTATIONS

Repeals. — Laws 2003, ch. 404, § 4 repealed 9-15-28 NMSA 1978, as enacted by Laws 1988, ch. 80, § 2, relating to findings and purpose, effective June 20, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

9-15-29. Definitions.

As used in Sections 9-15-28 [repealed] through 9-15-34 NMSA 1978:

A. "department" means the economic development department;

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

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

History: Laws 1988, ch. 80, § 3; 1991, ch. 21, § 26; 2003, ch. 404, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2003, ch. 404, § 4 repealed 9-15-28 NMSA 1978, effective June 20, 2003.

The 2003 amendment, effective June 20, 2003, substituted "trade and Mexican affairs" for "trade" following "director of the" near the middle of Subsection B; and deleted "department" following "economic development" at the end of Subsection C.

The 1991 amendment, effective March 27, 1991, substituted "Sections 9-15-28 through 9-15-34 NMSA 1978" for "the New Mexico Trade Promotion Act" in the introductory paragraph; deleted "and tourism" following "development" in Subsections A and B; and substituted "the economic development department" for "economic development and tourism" in Subsection C.

9-15-30. Mexican affairs division created; duties.

A. The "Mexican affairs division" is created as a division of the department.

B. The division shall be responsible for conducting and coordinating the state's relations with the Republic of Mexico and the state of Chihuahua and shall promote New Mexico products and services in Mexico. The division is created to coordinate activities of the department, the tourism department, the cultural affairs department, the

department of transportation, the department of health, the department of environment, the department of public safety, the New Mexico-Chihuahua commission, the border authority and the joint border research institute at New Mexico state university as those activities relate to improving New Mexico-Mexico relations and trade and encouraging or funding appropriate border development.

C. The division shall provide periodic reports to the New Mexico finance authority oversight committee on its activities and the activities of the state pertaining to New Mexico-Mexico relations, trade and border development.

History: Laws 1988, ch. 80, § 4; 2003, ch. 404, § 3; 2005, ch. 57, § 2.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, changed the name of the trade and Mexican affairs division to the Mexican affairs division; required the division to promote New Mexico products and services in Mexico; and eliminated responsibilities that are assigned to the division of international trade in Section 9-15-30.1 NMSA 1978.

The 2003 amendment, effective June 20, 2003, substituted "trade and Mexican affairs" for "trade" in the section heading; substituted "trade and Mexican affairs" for "trade" following "the" near the beginning of Subsection A; inserted "be responsible for conducting and coordinating the state's relations with the Republic of Mexico and the state of Chihuahua and shall" following "division shall" near the beginning of Subsection B; added present Paragraph B(1) and redesignated the subsequent paragraphs accordingly; and added Subsection C.

9-15-30.1. Division of international trade created; duties.

A. The "division of international trade" is created in the economic development department.

B. The division shall be responsible for conducting and coordinating the state's relations with other countries and shall promote New Mexico and its products and services. The division is created to:

(1) coordinate activities of the department and other state agencies as those activities relate to improving New Mexico's relations and trade with other countries;

(2) promote New Mexico to international investors;

(3) promote New Mexico products and services to potential international consumers;

(4) establish a central registry for New Mexico products and services;

(5) develop, maintain and use a database of potential domestic and international investors and consumers for New Mexico and its products and services; and

(6) foster, coordinate and support the efforts of individuals and organizations involved in the promotion of New Mexico and its businesses, products and services to consumers in other countries.

C. The division shall provide periodic reports to the legislature on its activities and the activities of the state pertaining to New Mexico's international relations and trade.

History: Laws 2005, ch. 57, § 1.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 57 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

9-15-31. Director; duties.

The director is responsible for the overall supervision of the division's activities in accordance with the purposes of Sections 9-15-28 [repealed] through 9-15-34 NMSA 1978. In addition, the director shall:

A. work with individuals and organizations outside of state government to formulate a trade promotion plan for inclusion in the department's five-year economic development and tourism plan;

B. establish and annually update the New Mexico trade registry of New Mexico businesses and the products and services they offer to consumers;

C. develop and maintain a data base of trade opportunities;

D. work with individuals and organizations outside of state government to promote New Mexico trade; and

E. prepare an annual report on the activities of the division.

History: Laws 1988, ch. 80, § 5; 1991, ch. 21, § 27.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2003, ch. 404, § 4 repealed 9-15-28 NMSA 1978, effective June 20, 2003.

The 1991 amendment, effective March 27, 1991, substituted "Sections 9-15-28 through 9-15-34 NMSA 1978" for "the New Mexico Trade Promotion Act" in the first sentence and deleted "five-year" before "trade promotion plan" in Subsection A.

9-15-32. Office established.

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

History: Laws 1989, ch. 205, § 1; 1991, ch. 21, § 28.

ANNOTATIONS

The 1991 amendment, effective March 27, 1991, deleted "and tourism" following "development".

9-15-33. Purpose.

The purpose of the office of enterprise development shall be to provide information and assistance to businesses wishing to relocate to New Mexico or to expand within New Mexico by providing a centralized information service and assistance center.

History: Laws 1989, ch. 205, § 2.

ANNOTATIONS

Effective dates. — Laws 1989, ch. 205 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989, 90 days after the adjournment of the legislature.

9-15-34. Duties of the department.

A. The economic development department shall establish the office of enterprise development. Within the office of enterprise development, the department shall:

(1) develop and maintain a comprehensive statewide business information data base and referral service;

(2) establish a mechanism for advertising the existence of the office and its referral service;

(3) provide professional assistance and information regarding licensing, permitting and taxation procedures; and

(4) establish a reporting procedure to monitor the success of the referral service.

B. The department shall develop a budget and hire a staff to operate the office of enterprise development.

History: Laws 1989, ch. 205, § 3; 1991, ch. 21, § 29.

ANNOTATIONS

The 1991 amendment, effective March 27, 1991, deleted "and tourism" following "development" in the first sentence in Subsection A.

9-15-34.1. Business incubators; conditions for state expenditures.

Business incubators receiving state funds shall be required to pass a state incubator certification program administered by the economic development department. The department shall certify business incubators that submit documentation to the department that the incubator has:

A. a mission statement that defines the incubator's role to assist entrepreneurs and support the growth of businesses;

B. for incubators established after the effective date of this section, a formal feasibility study indicating an appropriate market and local community support or, for incubators established prior to the effective date of this section, a business plan;

C. an effective governing board or an appropriate oversight advisory board committed to the incubator's mission;

D. qualified management and staff to achieve the mission of the incubator and to help businesses;

E. an ongoing business assistance program that places the greatest value on client assistance and adds value to client businesses by developing programs and coordinating activities such as:

(1) technical assistance and consulting;

(2) coaching and mentoring, business training workshops and seminars;

(3) providing marketing assistance;

(4) fostering networking opportunities and links with other business service providers; and

(5) providing assistance in obtaining financing;

F. a facility that encourages innovation and provides dedicated space for incubator client firms with flexible leases and that includes a common area meeting space and business equipment;

G. a process for client businesses that involves a screening and selection process and graduation policy for client companies;

H. a system for program evaluation;

I. all applicable required licenses and permits and a functional accounting system; and

J. membership in the national business incubation association.

History: Laws 2005, ch. 67, § 1.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 67 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

9-15-35. Program created; purposes.

A. The "New Mexico artisans business development program" is created within the economic development and tourism department to promote, in conjunction with the arts division of the office of cultural affairs, the New Mexico artisans industry by establishing a greater demand for New Mexico artisans' wares and by providing technical and marketing assistance to New Mexico artisans.

B. The purposes of the program shall include, but not be limited to, the following:

(1) establishment of a not-for-profit organization to carry out the objectives of the New Mexico artisans business development program;

(2) educational workshops and seminars in cooperation with the small business development centers for artisans to assist the centers in the development of their businesses and marketing of their wares;

(3) an assessment of a full range of marketing strategies for artisan wares and relating those wares to target markets;

(4) production of a promotional brochure of New Mexico artisans and their products;

(5) development and publishing of a marketing catalog of New Mexico artisans;

(6) establishment of a network of state and national distribution points and gift and trade shows for the promotion and export of New Mexico artisans' wares;

(7) development of a state and national marketing and exhibitions calendar;

(8) participation in state and national promotional shows by New Mexico artisans; and

(9) development of a marketing network with private-sector distributors, catalog producers and retailers.

History: Laws 1991, ch. 27, § 1.

ANNOTATIONS

Effective dates. — Laws 1991, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 1991, 90 days after the adjournment of the legislature.

Compiler's notes. — Laws 1991, ch. 21 created the tourism department. *See* Chapter 9, Article 15A NMSA 1978.

9-15-36. Fund created.

There is created in the state treasury the "New Mexico artisans business development fund". The fund shall consist of money appropriated to the fund by the legislature and any other revenues directed to the fund, such as gifts, donations and grants. The fund shall be administered by the economic development and tourism department and expenditures may be made from the fund upon vouchers signed by the secretary of economic development and tourism and warrants issued by the secretary of finance and administration for the purposes of the New Mexico artisans business development program. Interest earned on balances in the fund shall be credited to the fund.

History: Laws 1991, ch. 27, § 2.

ANNOTATIONS

Effective dates. — Laws 1991, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 1991, 90 days after the adjournment of the legislature.

Compiler's notes. — Laws 1991, ch. 21 created the tourism department. *See* Chapter 9, Article 15A NMSA 1978.

9-15-37. Short title.

Sections 1 through 5 [9-15-37 to 9-15-41 NMSA 1978] of this act may be cited as the "Defense Conversion and Technology Act".

History: Laws 1993, ch. 211, § 1 and by Laws 1993, ch. 216, § 1.

ANNOTATIONS

Emergency clauses. — Laws 1993, ch. 211, § 6 and Laws 1993, ch. 216, § 7 contained an emergency clause and were approved April 5, 1993.

Compiler's notes. — Laws 1993, ch. 211, § 1 and Laws 1993, ch. 216, § 1 enacted identical new sections of law.

9-15-38. Purpose.

The purpose of the Defense Conversion and Technology Act [9-15-37 to 9-15-41 NMSA 1978] is to designate the economic development department as the lead agency to promote defense conversion technology, coordinate the transfer of defense technology and other technology from federal, state and local government facilities to private sector industries and promote private-public partnership and business development programs.

History: Laws 1993, ch. 211, § 2 and by Laws 1993, ch. 216, § 2.

ANNOTATIONS

Emergency clauses. — Laws 1993, ch. 211, § 6 and Laws 1993, ch. 216, § 7 contained an emergency clause and were approved April 5, 1993.

Compiler's notes. — Laws 1993, ch. 211, § 2 and Laws 1993, ch. 216, § 2 enacted identical new sections.

9-15-39. Definitions.

As used in the Defense Conversion and Technology Act [9-15-37 to 9-15-41 NMSA 1978]:

A. "commission" means the economic development and tourism commission or any successor commission created in Chapter 9, Article 15 NMSA 1978 to provide program and policy guidance to the department; and

B. "department" means the economic development department.

History: Laws 1993, ch. 211, § 3 and by Laws 1993, ch. 216, § 3.

ANNOTATIONS

Emergency clauses. — Laws 1993, ch. 211, § 6 and Laws 1993, ch. 216, § 7 contained an emergency clause and were approved April 5, 1993.

Compiler's notes. — Laws 1993, ch. 211, § 3 and Laws 1993, ch. 216, § 3 enacted identical new sections.

9-15-40. Designation as the lead state agency.

The department is designated as the lead state agency to coordinate or accept federal and state funds appropriated for conversion of defense technologies and to coordinate technology transfer in accordance with the state's technology development plan.

History: Laws 1993, ch. 211, § 4 and by Laws 1993, ch. 216, § 4.

ANNOTATIONS

Emergency clauses. — Laws 1993, ch. 211, § 6 and Laws 1993, ch. 216, § 7 contained an emergency clause and were approved April 5, 1993.

Compiler's notes. — Laws 1993, ch. 211, § 4 and Laws 1993, ch. 216, § 4 enacted identical new sections.

9-15-41. Defense conversion; department duties.

A. The department shall coordinate all defense conversion and technology transfer activities of the state. The department is authorized to contract with the appropriate partnership intermediaries to assist in the coordination of defense conversion duties.

B. The department shall:

(1) oversee the activities of the manufacturing productivity center and manufacturing extension programs;

(2) coordinate the activities of small business incubators to encourage the development and viability of technology spin-off companies in the private sector;

(3) coordinate appropriate divisions in the department to provide technology export assistance;

(4) coordinate small business development and assistance programs for new and existing businesses;

(5) work with appropriate entities to identify sources of funding for capital expenditure programs and initial venture programs;

(6) coordinate the development of regional technology clusters; and

(7) provide support and coordination assistance as deemed necessary by the commission and the secretary of the department to assist the state in developing defense conversion industries.

History: Laws 1993, ch. 211, § 5 and by Laws 1993, ch. 216, § 5.

ANNOTATIONS

Emergency clauses. — Laws 1993, ch. 211, § 6 and Laws 1993, ch. 216, § 7 contained an emergency clause and were approved April 5, 1993.

Compiler's notes. — Laws 1993, ch. 211, § 5 and Laws 1993, ch. 216, § 5 enacted identical new sections.

9-15-42. Repealed.

ANNOTATIONS

Repeals. — Laws 1997, ch. 91, § 5 repealed 9-15-42 NMSA 1978, as enacted by Laws 1994, ch. 127, § 1, providing the short title, effective June 20, 1997. For provisions of former section, *see* the 1996 NMSA 1978 on *NMOneSource.com.*

9-15-43. Repealed.

History: Laws 1994, ch. 127, § 2; 1995, ch. 77, § 2; 1997, ch. 91, § 1; repealed by Laws 2006, ch. 14, § 3.

ANNOTATIONS

Repeals. — Laws 2006, ch. 14, § 3, repealed 9-15-43 NMSA 1978, as enacted by Laws 1994, ch. 127, § 2, relating to definitions, effective May 17, 2006. For provisions of former section, *see* the 2005 NMSA 1978 on *NMOneSource.com.*

9-15-44. Repealed.

History: Laws 1994, ch. 127, § 3; 1995, ch. 77, § 3; 1997, ch. 91, § 2; repealed by Laws 2006, ch. 14, § 3.

ANNOTATIONS

Repeals. — Laws 2006, ch. 14, § 3, repealed 9-15-44 NMSA 1978, as enacted by Laws 1994, ch. 127, § 3, relating to the creation of the space commercialization division and duties of the director, effective May 17, 2006. For provisions of former section, *see* the 2005 NMSA 1978 on *NMOneSource.com.*

9-15-45. Repealed.

History: Laws 1994, ch. 127, § 4; 1995, ch. 77, § 4; 1997, ch. 91, § 3; repealed by Laws 2006, ch. 14, § 3.

ANNOTATIONS

Repeals. — Laws 2006, ch. 14, § 3, repealed 9-15-45 NMSA 1978, as enacted by Laws 1994, ch. 127, § 4, relating to the creation of commission and membership, effective May 17, 2006. For provisions of former section, *see* the 2005 NMSA 1978 on *NMOneSource.com.*

9-15-46. Repealed.

History: Laws 1994, ch. 127, § 5; 1995, ch. 77, § 5; 1997, ch. 91, § 4; repealed by Laws 2006, ch. 14, § 3.

ANNOTATIONS

Repeals. — Laws 2006, ch. 14, § 3, repealed 9-15-46 NMSA 1978, as enacted by Laws 1994, ch. 127, § 5, relating to commission powers and duties, effective May 17, 2006. For provisions of former section, *see* the 2005 NMSA 1978 on *NMOneSource.com.*

9-15-47. Repealed.

History: Laws 1994, ch. 127, § 6; 1995, ch. 77, § 6; repealed by Laws 2006, ch. 14, § 3.

ANNOTATIONS

Repeals. — Laws 2006, ch. 14, § 3, repealed 9-15-47 NMSA 1978, as enacted by Laws 1994, ch. 127, § 6, relating to additional powers of commission, effective May 17, 2006. For provisions of former section, *see* the 2005 NMSA 1978 on *NMOneSource.com.*

9-15-48. Office of military base planning and support created; duties. (Repealed effective July 1, 2028.)

A. The "office of military base planning and support" is created, which is administratively attached to the economic development department. The department shall provide administrative services to the office.

B. The governor shall appoint a director of the office of military base planning and support.

C. The director of the office of military base planning and support shall:

(1) employ, under the authorization of the governor's chief of staff, the staff necessary to carry out the work of the office of military base planning and support and the military base planning commission;

(2) support the commission;

(3) inform the governor and the governor's chief of staff about issues impacting the military bases in the state, including infrastructure requirements, environmental needs, military force structure possibilities, tax implications, property considerations and issues requiring coordination and support from other state agencies;

(4) serve as a liaison with the community organizations whose purpose is to support the long-term viability of the military bases;

(5) communicate with the staff of the state's congressional delegation; and

(6) identify issues, prepare information and provide for presentations necessary for the commission to carry out its duties.

History: Laws 2003, ch. 166, § 1; 2003, ch. 170, § 1; 2004, ch. 16, § 1; 2015, ch. 123, § 1.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 9-15-51.1 NMSA 1978.

The 2015 amendment, effective July 1, 2015, revised the appointment authority of the office of military base planning and support and revised the reporting responsibilities of the director of the office of military base planning and support; in Subsection B, after "The", deleted "governor’s homeland security adviser" and added "governor"; in Paragraph (1) of Subsection C, after "governor’s", deleted "homeland security adviser" and added "chief of staff"; and in Paragraph (3) of Subsection C, after "governor’s", deleted "homeland security adviser" and added "chief of staff".

The 2004 amendment, effective February 27, 2004, amended this section to move the office of military base planning and support from the secretary of economic development to the governor's homeland security advisor.

9-15-49. Military base planning commission created; composition. (Repealed effective July 1, 2028.)

A. The "military base planning commission" is created, which is administratively attached to the economic development department. The department shall provide administrative services to the commission.

B. The commission consists of twelve members, eleven of whom are appointed by the governor with the advice and consent of the senate. The commission shall include the lieutenant governor and nine appropriate representatives from the counties, or adjoining counties, in which military bases are located. Two additional members shall be appointed at large from other counties.

C. The governor shall appoint a chair from among the members of the commission. The commission shall meet at the call of the chair and shall meet not less than quarterly. Members of the commission shall not be paid but shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

D. Notwithstanding the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978], meetings of the commission shall be closed to the public when proprietary alternative New Mexico military base realignment or closure strategies or any information regarding relocation of military units is discussed.

E. Information developed or obtained by the commission that pertains to proprietary commission strategies or related to the relocation of military units shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 3 NMSA 1978].

History: Laws 2003, ch. 166, § 2; 2003, ch. 170, § 2; 2004, ch. 16, § 2; 2005, ch. 8, § 1; 2015, ch. 123, § 2.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 9-15-51.1 NMSA 1978.

The 2015 amendment, effective July 1, 2015, revised the composition of the military base planning commission; in Subsection B, after "commission consists of", deleted "seventeen" and added "twelve", after "members,", deleted "fifteen of which are" and added "eleven of whom are", after "The commission shall include", deleted "the lieutenant governor, the governor’s homeland security adviser and" and added "the lieutenant governor and nine", and added the last sentence.

The 2005 amendment, effective June 17, 2005, increased the membership of the commission to seventeen members and increased the number of members who are appointed by the governor to fifteen members.

The 2004 amendment, effective February 27, 2004, amended this section to replace the secretary of economic development on the military base planning commission with the governor's homeland security advisor and to add Subsections D and E.

9-15-50. Duties (Repealed effective July 1, 2028.)

The military base planning commission shall:

A. obtain and evaluate information about the federal government's considerations, plans, policies and initiatives relating to military base realignment and closure;

B. obtain and evaluate information relating to the impact of federal military base realignment and closure plans on the state's economy and the military base area's local economy;

C. work with and provide assistance to established community organizations that have as their purpose the support of the long-term viability of the military bases in their local area;

D. ensure collaboration among the community organizations described in Subsection C of this section and an understanding of the joint efforts between the military bases in the state;

E. work with and provide assistance to the state's congressional delegation on matters relating to federal base realignment and closure plans; and

F. advise the governor on measures necessary to ensure the continued presence of military bases in the state.

History: Laws 2003, ch. 166, § 3 and Laws 2003, ch. 170, § 3.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 9-15-51.1 NMSA 1978.

Duplicate laws. — Laws 2003, ch. 170, § 3 and Laws 2003, ch. 166, § 3 enacted identical new sections, both effective July 1, 2003.

9-15-51. Repealed.

History: Laws 2003, ch. 166, § 4; 2003, ch. 170, § 4; 2005, ch. 208, § 1; 2009, ch. 96, § 1; 2015, ch. 119, § 1; repealed by Laws 2015, ch. 123, § 3.

ANNOTATIONS

Repeals. — Laws 2015, ch. 123, § 3 repealed 9-15-51 NMSA 1978, as enacted by Laws 2003, ch. 166, § 4, relating to the delayed repeal of the office of military base planning and support and the military base planning commission, effective July 1, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com*.

Laws 2015, ch. 119, § 1, effective June 19, 2015, also amended 9-15-51 NMSA 1978 by changing the delayed repeal of the office of military base planning and support, and the military base planning commission, from July 1, 2016 to July 1, 2022. The section was set out as amended by Laws 2015, ch. 123, § 3, effective July 1, 2015. *See* 12-1-8 NMSA 1978.

9-15-51.1. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

The office of military base planning and support and the military base planning commission are terminated on July 1, 2027 pursuant to the provisions of the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The office and the commission shall continue to operate according to the provisions of Sections 9-15-48 through 9-15-51.1 NMSA 1978 until July 1, 2028. Effective July 1, 2028, Sections 9-15-48 through 9-15-51.1 NMSA 1978 are repealed.

History: 1978 Comp., § 9-15-51.1, enacted by Laws 2021, ch. 50, § 1.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 50 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

9-15-52. Short title.

This act [9-15-52 to 9-15-55 NMSA 1978] may be cited as the "Minority Business Assistance Act".

History: Laws 2007, ch. 180, § 1.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 180, § 5 made the Minority Business Assistance Act effective July 1, 2007.

9-15-53. Definitions.

As used in the Minority Business Assistance Act [9-15-52 to 9-15-55 NMSA 1978]:

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

B. "minority business" means a business, with its principal place of business in New Mexico:

(1) the majority ownership of which is held by individuals who are residents of New Mexico and African Americans, Hispanic Americans, Asian Americans or Native Americans; and

(2) that employs twenty or fewer people.

History: Laws 2007, ch. 180, § 2.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 180, § 5 made the Minority Business Assistance Act effective July 1, 2007.

9-15-54. Minority business assistance program; department duties and powers.

A. The department shall develop and implement a minority business assistance program to facilitate the entrance of minority businesses, located throughout the state, into the marketplace. As part of the development and implementation of the program, the department, in collaboration with the labor department, shall:

(1) develop a process to define and identify minority businesses that may benefit from additional assistance and training in the areas of general business practices, accounting principles, business ethics, technical expertise, marketing and government procurement;

(2) develop a registry of well-established businesses, individuals within those businesses, retirees and other persons that have the expertise and skills that may be needed by minority businesses and that have expressed a desire to volunteer as a mentor or otherwise to assist minority businesses;

(3) develop an outreach and marketing program so that minority businesses may become aware of the assistance available and so that needed, experienced individuals are aware of the opportunity to mentor and assist minority businesses;

(4) develop training materials and in-house training expertise; and

(5) create a mentorship program in which employees or agents of the department or volunteers with business experience will visit minority businesses for the purpose of training, mentoring, advising and otherwise assisting the minority businesses in the development or improvement of general business practices, accounting

principles, business ethics, technical expertise, marketing and government procurement.

B. In performing its duties under the Minority Business Assistance Act [9-15-52 to 9-15-55 NMSA 1978], the department may:

(1) to the extent money has been appropriated for such purposes, develop a grant program for minority businesses to acquire the expertise necessary to compete effectively; and

(2) do all other things necessary and proper to effectuate the purpose of the Minority Business Assistance Act.

C. All state agencies shall cooperate with the department in carrying out the provisions of the Minority Business Assistance Act and shall, as the opportunity arises, assist minority businesses and encourage other businesses and individuals to register as volunteers under that act.

History: Laws 2007, ch. 180, § 3.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 180, § 5 made the Minority Business Assistance Act effective July 1, 2007.

9-15-55. Minority business assistance fund created.

The "minority business assistance fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year. Money in the fund is subject to appropriation by the legislature to the department for the purposes of carrying out the provisions of the Minority Business Assistance Act [9-15-52 to 9-15-55 NMSA 1978]. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of economic development.

History: Laws 2007, ch. 180, § 4.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 180, § 5 made the Minority Business Assistance Act effective July 1, 2007.

9-15-56. Economic development tax incentives; guidelines.

A. An economic development tax incentive shall include in the enabling statute the following minimum provisions:

(1) a statement of purpose;

(2) the designation of a responsible agency to establish measurable policy goals, track state expenditures, quantify the state's return on investment and report regularly to the interim revenue stabilization and tax policy committee and the legislative finance committee;

(3) a requirement that the economic development department track job creation;

(4) specific standards for the taxpayer to qualify for the incentive;

(5) reporting requirements for the taxpayer;

(6) a description of the financial obligation of the taxpayer if the specific standards are not met; and

(7) a mandatory review of the incentive no more than every seven years.

B. The economic development department shall publish annually an aggregate list of the economic development tax incentives used by each taxpayer.

C. For the purposes of this section, "economic development tax incentive" means a credit, deduction, rebate, exemption or other tax benefit for the primary purpose of promoting economic development or offering an advantage to a particular industry or type of business to do business in New Mexico.

D. Nothing in this section shall be construed to conflict with current confidentiality rules or statutes.

History: Laws 2010, ch. 87, § 1.

ANNOTATIONS

Effective dates. — Laws 2010, ch. 87 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

9-15-57. Solo-worker program.

A. As used in this section:

(1) "economic-base job" means a job in which sixty percent or more of the revenue generated from the goods or services produced derives from outside the state;

(2) "program agency" means a certified business incubator, a community college or an organization whose purpose is to create jobs and promote economic development; and

(3) "solo worker" means a person who is engaged in full-time employment and whose employer, if any, does not supply the office space or amenities used to perform the person's work.

B. The "solo-worker program" is created in the economic development department. The purpose of the solo-worker program is to improve the state's rural and urban economies by creating and sustaining economic-base jobs and expanding businesses owned and operated by solo workers engaged in economic-base jobs.

C. To carry out the purpose of the solo-worker program, the department shall provide matching funding, if other funds become available, to program agencies for advancing initiatives that:

(1) create opportunities for New Mexico residents to become solo workers engaged in economic-base jobs;

(2) support the continued employment and business expansion of existing solo workers engaged in economic-base jobs;

(3) recruit from outside of the state solo workers engaged in economic-base jobs; and

(4) make the state and its local communities more competitive for creating, attracting and retaining solo- worker jobs.

History: Laws 2016, ch. 57, § 1.

ANNOTATIONS

Effective dates. — Laws 2016, ch. 57 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

9-15-58. Sustainable economy task force; created; staff.

A. The "sustainable economy task force" is created and is administratively attached to the economic development department. The task force consists of the following voting members as follows:

(1) the commissioner of public lands or the commissioner's designee;

(2) the secretary of economic development or the secretary's designee;

(3) the secretary of finance and administration or the secretary's designee;

(4) the secretary of taxation and revenue or the secretary's designee;

(5) the secretary of energy, minerals and natural resources or the secretary's designee;

(6) the secretary of Indian affairs or the secretary's designee;

(7) the secretary of workforce solutions or the secretary's designee;

(8) the secretary of general services or the secretary's designee;

(9) the secretary of higher education or the secretary's designee;

(10) the secretary of public education or the secretary's designee;

(11) the secretary of environment or the secretary's designee;

(12) the state investment officer or the state investment officer's designee; and

(13) the chair of the sustainable economy advisory council.

B. The chair of the task force shall be the secretary of economic development or the secretary's designee, and the vice chair of the task force shall be the member serving as the chair of the sustainable economy advisory council. The task force shall meet at the call of the chair.

C. The "sustainable economy advisory council" is created and is administratively attached to the economic development department. The advisory council shall advise the sustainable economy task force on developing and achieving the goals of the strategic plan provided in Section 2 [9-15-59 NMSA 1978] of this 2021 act. The advisory council shall consist of the following members:

(1) one representative of local governments, appointed by the chair of the task force;

(2) two representatives of disproportionately impacted communities or organizations with experience working with disproportionately impacted communities, appointed by the chair of the task force;

(3) two representatives of organizations with experience in sustainable economic development planning and workforce development, appointed by the chair of the task force;

(4) one representative from industry and business sectors involved in achieving or that may be affected by the goals of the sustainable economy task force, appointed by the chair of the task force; and

(5) eight representatives of tribal governments or entities, appointed by the Indian affairs department.

D. The chair of the advisory council shall be elected by the members of the advisory council.

E. Members of the task force may receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

F. The economic development department shall provide the necessary staff and administrative support to the task force.

G. As used in this section, "disproportionately impacted community" means a community or population of people for which multiple burdens, including environmental and socioeconomic stressors, inequity, poverty, high unemployment, pollution or discrimination, may act to persistently and negatively affect the health, well-being and environment of the community or population and includes tribal communities, communities of color and low-income rural communities and native people, people of color, women, immigrants, youth, formerly incarcerated people, lesbian, gay, bisexual, transgender and queer people and people with disabilities.

History: Laws 2021, ch. 42, § 1.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 42, § 4 made Laws 2021, ch. 42, § 1 effective July 1, 2021.

9-15-59. Sustainable economy task force; duties; strategic plan; reporting.

A. The sustainable economy task force shall:

(1) develop a strategic plan in fiscal year 2022 to transition the state economy away from reliance on natural resource extraction; provided that the strategic plan shall adhere to the requirements set forth in Subsection C of this section and shall be updated annually through fiscal year 2027; and

(2) no later than October 1 of each year, report on the strategic plan to the legislative finance committee, the revenue stabilization and tax policy committee and any other appropriate interim legislative committee.

B. The sustainable economy task force may hire or contract with consultants or experts to provide the task force with information to assist in developing the strategic plan.

C. The strategic plan, which shall be developed and updated annually by the sustainable economy task force, shall:

(1) provide policies to promote:

(a) the addition of new jobs statewide to replace jobs that rely on the extraction or development of natural resources;

(b) diversifying the state's tax base to replace the revenue generated from the natural resource extraction sector, including policies promoting: 1) economic development; 2) state investments; 3) infrastructure development; and 4) determining alternative funding sources for education and hospitals; and

(c) long-term economic growth;

(2) address recommendations provided in current and future economic studies and development efforts, including those from state agencies, institutions of higher learning, national laboratories and business incubators;

(3) be developed in consultation with the communities that will be affected by the provisions of the plan, including Indian nations, tribes and pueblos located wholly or partly in New Mexico, local governments and local communities; and

(4) include a plan to implement the recommendations of the study titled the "New Mexico Clean Energy Workforce Development Study" that was commissioned by the workforce solutions department and published in June 2020 and expand the development of jobs with family-sustaining wages and benefits, opportunities for advancement and safe working conditions in industries engaged in sustainable economic development for New Mexico workers, prioritizing disproportionately impacted communities.

D. As used in this section, "disproportionately impacted community" means a community or population of people for which multiple burdens, including environmental and socioeconomic stressors, inequity, poverty, high unemployment, pollution or discrimination, may act to persistently and negatively affect the health, well-being and environment of the community or population and includes tribal communities, communities of color and low-income rural communities and native people, people of

color, women, immigrants, youth, formerly incarcerated people, lesbian, gay, bisexual, transgender and queer people and people with disabilities.

History: Laws 2021, ch. 42, § 2.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 42, § 4 made Laws 2021, ch. 42, § 2 effective July 1, 2021.

ARTICLE 15A
Tourism Department

9-15A-1. Short title.

Chapter 9, Article 15A NMSA 1978 may be cited as the "Tourism Department Act".

History: Laws 1991, ch. 21, § 1; 1993, ch. 101, § 6.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "Chapter 9, Article 15A NMSA 1978" for "Sections 1 through 7 of this act".

9-15A-2. Definitions.

As used in the Tourism Department Act:

A. "commission" means the tourism commission;

B. "department" means the tourism department; and

C. "secretary" means the secretary of tourism.

History: Laws 1991, ch. 21, § 2; 1993, ch. 101, § 7.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, deleted "economic development and" preceding "tourism" in Subsection A.

9-15A-3. Department established.

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

A. the promotion division;

B. the New Mexico magazine division;

C. the sports authority division;

D. the tourism development division;

E. the marketing division; and

F. the administrative services division.

History: Laws 1991, ch. 21, § 3; 1995, ch. 163, § 2; 2007, ch. 286, § 1; 2007, ch. 287, § 1.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, changed the travel and marketing division to the promotion division and added Subsections C through E.

Laws 2007, ch. 286, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 287, § 1. *See* 12-1-8 NMSA 1978.

The 1995 amendment, effective July 1, 1995, substituted "three" for "two" preceding "division" in the introductory language, added Subsection C and made minor stylistic changes in Subsections A and B.

9-15A-4. Purpose.

The purpose of the Tourism Department Act is to create a cabinet-level department in order to:

A. provide a coordinated statewide perspective with regard to tourism activities;

B. provide a data base for local and regional tourism groups and serve as a comprehensive source of information and assistance to tourism-related businesses wishing to locate, expand or do business in New Mexico; and

C. monitor the progress of state-supported tourism activities and prepare annual reports of such activities, their status and their impact.

History: Laws 1991, ch. 21, § 4.

ANNOTATIONS

Emergency clauses. — Laws 1991, ch. 21, § 47 contained an emergency clause and was approved March 27, 1991.

9-15A-4.1. Tourism revenue enterprise fund [tourism enterprise fund] created; fund administration.

A. The "tourism enterprise fund" is created in the state treasury. Money appropriated to the fund or accruing to it through sales of souvenirs and sundries at visitors centers, web-site-related sales, television special program rights, gifts, grants, fees, penalties, bequests or any other source shall be delivered to the state treasurer and deposited in the fund. Money in the fund is appropriated to the tourism department for the purpose of carrying out the duties of the department. Money in the fund shall not revert to the general fund at the end of a fiscal year.

B. The fund shall be administered by the tourism department. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of tourism.

History: Laws 2003, ch. 299, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Effective dates. — Laws 2003, ch. 299 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

9-15A-5. Secretary of tourism; appointment.

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

History: Laws 1991, ch. 21, § 5.

9-15A-6. Secretary; duties and general powers.

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

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

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

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

(3) organize the department into those organizational units he deems will enable it to function most efficiently;

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

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

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

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

(8) prepare an annual budget of the department based upon the five-year tourism plan approved by the commission. This plan shall be updated and approved annually by the commission;

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

(a) minimize or eliminate duplication of services;

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

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

(10) appoint a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978]. Persons appointed to these positions shall serve at the pleasure of the secretary;

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

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

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

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

History: Laws 1991, ch. 21, § 6; 1993, ch. 101, § 8.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, in Subsection B, deleted "or actions" following "administrative action" in Paragraph (5), deleted "economic development and" following "five-year" in Paragraph (8) and deleted "tourism" preceding "department" in Paragraph (9)(c).

9-15A-7. Secretary; additional duties.

In addition to the secretary's responsibility for the overall supervision of the department's operation in support of the purposes of the Tourism Department Act, the secretary shall:

A. work with and provide staff support to the commission in formulating and implementing the state's five-year tourism plan;

B. advise the commission of proposed rules, regulations, projects and contractual arrangements;

C. enter into contracts with state, federal or private entities, apply for and accept any state, federal or private funds or grants for such projects and accept similar donations and bequests from any source;

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

E. perform such other duties as requested by the commission in order to further the purposes of the Tourism Department Act.

History: Laws 1991, ch. 21, § 7; 1993, ch. 101, § 9.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, deleted "economic development and" preceding "tourism" in Subsection A.

9-15A-7.1. Secretary; additional duties; promotion of Indian arts, crafts and culture.

In addition to the secretary's responsibility for the overall supervision of the department, the secretary shall:

A. encourage the preservation and development of Indian arts and crafts among the Indian tribes and pueblos of the state;

B. encourage the preservation of traditional rites and ceremonials of Indian tribes and pueblos to increase knowledge and appreciation of those arts, crafts, rites and ceremonials; and

C. promote the intertribal Indian ceremonial association, incorporated, located in Gallup.

History: Laws 1996, ch. 25, § 1.

9-15A-7.2. Information not subject to inspection.

The following information created, obtained or maintained by the department is not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]:

A. proprietary technical or business information related to the development of specific marketing or advertising campaigns for the state; and

B. a consumer's individually identifiable information provided during an online, tourism-related transaction related to a product or service provided by the department or its contractors.

History: 1978 Comp., § 9-15A-7.2, enacted by Laws 2023, ch. 67, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2023, ch. 67, § 5 contained an emergency clause and was approved March 30, 2023.

9-15A-8. Tourism commission created; membership; administratively attached to the department.

A. The "tourism commission" is created. The commission shall be a planning commission administratively attached to the department. The commission shall provide advice to the department on policy matters. The commission shall be responsible for the annual approval and update of the state's five-year tourism plan. The commission shall consist of seven members who shall be qualified electors of the state of New Mexico, no more than four of whom, at the time of their appointment, shall be members of the same political party and at least one of whom shall be a Native American. Members shall be appointed by the governor and confirmed by the senate. Two members shall be appointed from each of the three congressional districts. One member shall be appointed from the state at large.

B. Appointments shall be made for seven-year terms expiring on January 1 of the appropriate year. Commission members shall serve staggered terms as determined by the governor at the time of their initial appointment. Annually, the governor shall designate a chairman of the commission from among the members.

C. The commission shall meet at the call of the chairman, not less than once each quarter, and shall invite representatives of appropriate legislative committees, other state agencies and interested persons to its meetings for the purpose of information exchange and coordination.

D. Commission members shall not vote by proxy. A majority of the members constitutes a quorum for the conduct of business.

E. Members of the commission shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given the member being removed. The senate shall be given exclusive original jurisdiction over proceedings to remove members of the commission under such rules as it may promulgate. The senate's decision in connection with such matters shall be final. A vacancy in the membership of the commission occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

F. Commission members shall not be paid, but shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: 1978 Comp., § 9-15A-8, enacted by Laws 1993, ch. 101, § 10.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 101 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after the adjournment of the legislature.

9-15A-9. Commission; powers and duties.

The commission shall:

A. develop and recommend policies and provide policy and program guidance for the department;

B. review, modify and approve annual updates to the state's five-year tourism plan generated by the department; and

C. establish such rules and regulations for its own operations as are necessary to achieve the purposes of the Tourism Department Act. Rules and regulations of the commission shall be adopted in the same procedural manner as rules and regulations of the department are adopted and shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: 1978 Comp., § 9-15A-9, enacted by Laws 1993, ch. 101, § 11.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 101 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after the adjournment of the legislature.

9-15A-10. Duties of the sports authority division.

The sports authority division of the department shall:

A. develop an overall strategic plan for recruiting and retaining various forms of professional and amateur sporting events;

B. identify existing infrastructure for sporting activities, identify and propose future infrastructure and locations and identify opportunities for private and public partnerships on infrastructure;

C. inventory all high school and college sports venues, including the date of the venue's original construction and the venue's seating capacity;

D. inventory all public and private sports venues, including little league fields, soccer fields, indoor basketball courts and ice rinks;

E. foster relationships between sporting event organizers and event sponsors;

F. foster relationships among state and local agencies and provide advice and direction needed to increase the number and quality of sporting events held in New Mexico; and

G. make recommendations to the legislature to enhance sports opportunities for students and young athletes.

History: Laws 2007, ch. 286, § 2; 2007, ch. 287, § 2; 2023, ch. 202, § 1.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, revised the duties of the sports authority division of the tourism department; redesignated former Paragraphs A(1) and A(2) as Subsections A and B respectively; added new Subsections C and D; redesignated former Paragraphs A(3) and A(4) as Subsections E and F, respectively; deleted former Subsection B; and added Subsection G.

9-15A-11. Sports advisory committee.

A. The "sports advisory committee" is created to advise and support the sports authority division of the department.

B. The sports advisory committee consists of the lieutenant governor or the lieutenant governor's designee, who shall serve as chair of the committee, and ten members of the public appointed by the governor.

C. Members shall be appointed for four-year terms expiring on January 1 and shall serve at the pleasure of the governor. Members serve until their successors have been

appointed and qualified. The governor may fill any vacancies on the committee for the remainder of an unexpired term.

D. The committee may elect such other officers as it deems necessary to carry out its duties.

E. Public members of the committee are entitled to receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

F. Representation on the committee shall resemble the demographics of New Mexico. No more than five public members shall be members of the same political party at the time of their appointments.

History: Laws 2007, ch. 286, § 3; 2007, ch. 287, § 3; 2023, ch. 202, § 2.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, revised the number of members and composition of the sports advisory committee; in Subsection B, after "consists of", deleted "twenty-five" and added "the lieutenant governor or the lieutenant governor's designee, who shall serve as chair of the committee, and ten", and deleted "and six ex-officio voting members as follows"; deleted former Paragraphs B(1) through B(6); deleted former Subsection C; redesignated former Subsection D as Subsection C; in Subsection C, deleted "Public"; deleted former Subsection E and redesignated former Subsections F and G as Subsections E and F, respectively; and in Subsection F, after "New Mexico", deleted "in conjunction with the three congressional districts" and added "No more than five public members shall be members of the same political party at the time of their appointments.".

9-15A-12. Marketing excellence bureau; created; duties. (Effective July 1, 2024.)

A. The "marketing excellence bureau" is created in the marketing division of the department.

B. The marketing excellence bureau shall:

(1) serve as a centralized collection of marketing-focused expertise, knowledge and resources to support the program goals of executive branch agencies;

(2) provide guidance, information, support and training related to marketing efforts;

(3) support strategy alignment and develop efficiencies for marketing efforts for all executive branch agencies;

(4) assist executive branch agencies in identifying and developing new market strategies and technology solutions to enhance the agencies' marketing efforts; and

(5) lead the marketing strategy, asset creation and advertising placements for the economic development corporation and for all executive branch agencies and marketing and public education programs, as requested.

History: *Laws 2023, ch. 18, § 1.*

ANNOTATIONS

Effective dates. *— Laws 2023, ch. 18, § 3 made Laws 2023, ch. 18, § 1 effective July 1, 2024.*

ARTICLE 15B
New Mexico Sports Authority (Repealed.)

9-15B-1. Repealed.

History: Laws 2005, ch. 197, § 1; repealed by Laws 2007, ch. 286, § 5 and Laws 2007, ch. 287, § 5.

ANNOTATIONS

Repeals. — Laws 2007, ch. 286, § 5 and Laws 2007, ch. 287, § 5 repealed 9-15B-1 NMSA 1978, as enacted by Laws 2005, ch. 197, § 1, relating to the short title, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-15B-2. Repealed.

History: Laws 2005, ch. 197, § 2; repealed by Laws 2007, ch. 286, § 5 and Laws 2007, ch. 287, § 5.

ANNOTATIONS

Repeals. — Laws 2007, ch. 286, § 5 and Laws 2007, ch. 287, § 5 repealed 9-15B-2 NMSA 1978, as enacted by Laws 2005, ch. 197, § 2, relating to definitions, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-15B-3. Repealed.

History: Laws 2005, ch. 197, § 3; repealed by Laws 2007, ch. 286, § 5 and Laws 2007, ch. 287, § 5.

ANNOTATIONS

Repeals. — Laws 2007, ch. 286, § 5 and Laws 2007, ch. 287, § 5 repealed 9-15B-3 NMSA 1978, as enacted by Laws 2005, ch. 197, § 3, relating to authority membership, terms, co-chairpersons; quorum, voting and compensation, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-15B-4. Repealed.

History: Laws 2005, ch. 197, § 4; repealed by Laws 2007, ch. 286, § 5 and Laws 2007, ch. 287, § 5.

ANNOTATIONS

Repeals. — Laws 2007, ch. 286, § 5 and Laws 2007, ch. 287, § 5 repealed 9-15B-4 NMSA 1978, as enacted by Laws 2005, ch. 197, § 4, relating to administratively attached agency, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-15B-5. Repealed.

History: Laws 2005, ch. 197, § 5; repealed by Laws 2007, ch. 286, § 5 and Laws 2007, ch. 287, § 5.

ANNOTATIONS

Repeals. — Laws 2007, ch. 286, § 5 and Laws 2007, ch. 287, § 5 repealed 9-15B-5 NMSA 1978, as enacted by Laws 2005, ch. 197, § 5, relating to duties of the authority, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-15B-6. Repealed.

History: Laws 2005, ch. 197, § 6; repealed by Laws 2007, ch. 286, § 5 and Laws 2007, ch. 287, § 5.

ANNOTATIONS

Repeals. — Laws 2007, ch. 286, § 5 and Laws 2007, ch. 287, § 5 repealed 9-15B-6 NMSA 1978, as enacted by Laws 2005, ch. 197, § 6, relating to director and staff, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

ARTICLE 15C
Intertribal Ceremonial (Recompiled)

9-15C-1. Recompiled.

History: Laws 2005, ch. 219, § 1; 2006, ch. 19, § 1; 1978 Comp., § 9-15C-1, recompiled and amended as § 12-16-1 by Laws 2023, ch. 144, § 1.

ANNOTATIONS

Recompilations. — Laws 2023, ch. 144, § 1 recompiled and amended former 9-15C-1 NMSA 1978 as 12-16-1 NMSA 1978, effective July 1, 2023.

9-15C-2. Recompiled.

History: Laws 2005, ch. 219, § 2; 2006, ch. 19, § 2; § 9-15C-2, recompiled and amended as § 12-16-2 by Laws 2023, ch. 144, § 2.

ANNOTATIONS

Recompilations. — Laws 2023, ch. 144, § 2 recompiled and amended former 9-15C-2 NMSA 1978 as 12-16-2 NMSA 1978, effective July 1, 2023.

9-15C-3. Recompiled.

History: Laws 2005, ch. 219, § 3; 2006, ch. 19, § 3; 1978 Comp., § 9-15C-3, recompiled and amended as § 12-16-3 by Laws 2023, ch. 144, § 3.

ANNOTATIONS

Recompilations. — Laws 2023, ch. 144, § 3 recompiled and amended former 9-15C-3 NMSA 1978 as 12-16-3 NMSA 1978, effective July 1, 2023.

9-15C-4. Recompiled.

History: Laws 2005, ch. 219, § 4; 2006, ch. 19, § 4; 1978 Comp., § 9-15C-4, recompiled and amended as § 12-16-4 by Laws 2023, ch. 144, § 4.

ANNOTATIONS

Recompilations. — Laws 2023, ch. 144, § 4 recompiled and amended former 9-15C-4 NMSA 1978 as 12-16-4 NMSA 1978, effective July 1, 2023.

9-15C-5. Recompiled.

History: Laws 2005, ch. 219, § 5; 1978 Comp., § 9-15C-5, recompiled as § 12-16-5 by Laws 2023, ch. 144, § 7.

ANNOTATIONS

Recompilations. — Laws 2023, ch. 144, § 7 recompiled former 9-15C-5 NMSA 1978 as 12-16-5 NMSA 1978, effective July 1, 2023.

ARTICLE 15D
Green Jobs

9-15D-1. Short title.

This act [9-15D-1 to 9-15D-5 NMSA 1978] may be cited as the "Green Jobs Act".

History: Laws 2009, ch. 275, § 1.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 275, § 6 made Laws 2009, ch. 275, § 1 effective July 1, 2009.

9-15D-2. Definitions.

As used in the Green Jobs Act:

A. "department" means the higher education department;

B. "fund" means the green jobs fund;

C. "green industries" means industries that contribute directly to preserving or enhancing environmental quality by reducing waste and pollution or producing sustainable products using sustainable processes and materials and that provide opportunities for advancement along a career track of increasing skills and wages. Green industries include:

(1) energy system retrofits to increase energy efficiency and conservation;

(2) production and distribution of biofuels, including vehicle retrofits for biofuels;

(3) building design and construction that meet the equivalent of best available technology in energy and environmental design standards;

(4) organic and community food production;

(5) manufacture of products from nontoxic, environmentally certified or recycled materials;

(6) manufacture and production of sustainable technologies, including solar panels, wind turbines and fuel cells;

(7) solar technology installation and maintenance;

(8) recycling, green composting and large-scale reuse of construction and demolition materials and debris; and

(9) water retrofits to increase water efficiency and conservation;

D. "green jobs training programs" means those programs implemented by educational institutions related to training individuals to work in green industries and to ensure that appropriate support services are provided;

E. "support services" means those services that provide trainees with the opportunity to participate in green jobs training programs, including:

(1) child care;

(2) tuition;

(3) materials needed for training programs;

(4) counseling and mentoring services;

(5) internships; or

(6) job placement programs; and

F. "target populations" means disadvantaged individuals, including:

(1) low-income individuals;

(2) veterans;

(3) formerly incarcerated, nonviolent offenders;

(4) tribal and rural constituencies;

(5) workers adversely affected by changing national or state energy policy;

(6) at-risk youth;

(7) unemployed youth and adults;

(8) high school dropouts; or

(9) single mothers.

History: Laws 2009, ch. 275, § 2.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 275, § 6 made Laws 2009, ch. 275, § 2 effective July 1, 2009.

9-15D-3. State plan for green jobs training programs.

A. The department, in coordination with existing apprenticeship programs administered by the department and the public education department, shall develop a state plan for the development of green jobs training programs with a focus on rural and tribal communities no later than the end of fiscal year 2010. This plan is intended to complement existing apprenticeship programs and in no way replace such programs currently funded with state money. The plan shall include a schedule for funding and implementation that gives priority to programs directed at target populations. The department shall develop the plan:

(1) for coordination of a state research program with the workforce solutions department in which labor market data shall be collected and analyzed to track work force trends from renewable energy and energy-efficiency industries and energy-related initiatives;

(2) for a municipal and tribal energy training partnership program in which the department shall award competitive grants to higher education institutions in partnerships with cities, towns, counties and tribes to administer green jobs training programs; and

(3) for a pathways out of poverty program in which the department shall award competitive grants to higher education institutions in partnerships to administer green jobs training programs directed specifically at disadvantaged target populations.

B. The plan shall be followed by interested higher education institutions in New Mexico, and the institutions shall cooperate with the department in the development and the implementation of the plan.

History: Laws 2009, ch. 275, § 3.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 275, § 6 made Laws 2009, ch. 275, § 3 effective July 1, 2009.

9-15D-4. Green jobs fund created.

A. The "green jobs fund" is created in the state treasury and shall consist of money transferred to the fund pursuant to the provisions of the federal Green Jobs Act of 2007 and other transfers, appropriations, distributions, gifts, grants and donations to the fund made for the purpose of funding green jobs training programs. Earnings of the fund shall be credited to the fund. Balances in the fund at the end of any fiscal year shall remain in the fund.

B. Money in the fund shall be administered by the department of finance and administration and shall be used only for the purpose of making grants for the administration of green jobs training programs pursuant to the Green Jobs Act.

C. Payments shall be made from the green jobs fund upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's designated representative. Such payments shall be made for the costs and administration of the Green Jobs Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

History: Laws 2009, ch. 275, § 4.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 275, § 6 made Laws 2009, ch. 275, § 4 effective July 1, 2009.

9-15D-5. Annual report required.

No later than December 1 of each year, the department shall report to the legislature and to the governor on its activities during the previous fiscal year in administering the provisions of the Green Jobs Act. The report shall include:

A. details concerning all grants made for the administration of green jobs training programs;

B. details concerning all expenditures made in administering the provisions of the Green Jobs Act;

C. a list of all higher education institutions in which green jobs training programs were developed and funded;

D. an analysis of whether the green jobs training programs have been cost-effective;

E. a report showing progress made in complying with the state plan developed pursuant to the Green Jobs Act, and, if in noncompliance, a plan for achieving compliance in the future;

F. a summary of activities being conducted during the present fiscal year; and

G. any additional information that will assist the legislature and the governor in evaluating the program.

History: Laws 2009, ch. 275, § 5.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 275, § 6 made Laws 2009, ch. 275, § 5 effective July 1, 2009.

ARTICLE 15E
Bioscience Development

9-15E-1. Short title.

This act [9-15E-1 to 9-15E-8 NMSA 1978] may be cited as the "Bioscience Development Act".

History: Laws 2017, ch. 134, § 1.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 134 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

9-15E-2. Definitions.

As used in the Bioscience Development Act:

A. "authority" means the New Mexico bioscience authority;

B. "bioscience" means the scientific areas represented by life sciences and biotechnology that are included in the five industries recognized by the United States department of labor:

(1) drugs and pharmaceuticals;

(2) medical devices and equipment;

(3) research testing and medical laboratories;

(4) bioscience-related distribution; and

(5) agriculture and chemicals related to bioscience;

C. "board of directors" means the board of directors of the authority;

D. "financial assistance" means tax incentives, grants, loans and other financial benefits provided for projects to a qualified entity on terms and conditions approved by the authority;

E. "national laboratories" means Los Alamos national laboratory and Sandia national laboratories; and

F. "research institutions" means the university of New Mexico, New Mexico state university and the New Mexico institute of mining and technology.

History: Laws 2017, ch. 134, § 2.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 134 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

9-15E-3. New Mexico bioscience authority created; board of directors; membership.

A. The "New Mexico bioscience authority" is created as a public-private partnership, which shall be formed pursuant to the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], representing a collaborative among state government, research institutions, national laboratories and private industry in New Mexico. The authority is administratively attached to and shall be considered an affiliated supporting organization of the university of New Mexico health sciences center pursuant to Section 6-5A-1 NMSA 1978. The authority shall constitute a public body corporate by the name set forth in the incorporation certificate and by such name may sue and be sued, have the capacity to make contracts, acquire, hold, enjoy, dispose of and convey property real and personal, accept grants and donations, borrow money, incur indebtedness, impose fees and assessments and do any other act or thing necessary or proper for carrying out the purposes of the Bioscience Development Act.

B. The authority shall be governed, and all of its functions, powers and duties shall be exercised, by the board of directors. The board of directors shall consist of thirteen voting members as follows:

(1) two representatives of the university of New Mexico health sciences center with experience in conducting research in bioscience, to be appointed by the president of the university of New Mexico;

(2) two representatives of New Mexico state university with experience in conducting research in bioscience, to be appointed by the president of the university;

(3) one representative of the New Mexico institute of mining and technology with experience in conducting research in bioscience, to be appointed by the president of the institute;

(4) the secretary of economic development or the secretary's designee;

(5) the executive director of the spaceport authority or the executive director's designee; and

(6) six members of the public who have experience working in bioscience as follows:

(a) two members appointed by the governor with the advice and consent of the senate; and

(b) four members appointed by the New Mexico legislative council with the advice and consent of the senate; provided that no more than two members shall be members of the same political party.

C. The public members appointed pursuant to Paragraph (5) [6] of Subsection B of this section by the governor and the New Mexico legislative council shall be residents of the state and shall serve for terms of four years, except for the initial appointees, who shall be appointed so that the terms are staggered after initial appointment. Initial appointees by the governor shall serve terms as follows: one member for two years and one member for four years. Initial appointees by the New Mexico legislative council shall be appointed to serve terms as follows: one member for one year, one member for two years, one member for three years and one member for four years.

D. Members shall receive no compensation, perquisite or allowance for serving as a member of the board of directors.

E. The board of directors shall adopt bylaws, in accordance with the Nonprofit Corporation Act, which bylaws shall govern the conduct of the authority. Members of the board of directors shall elect a chair of the board, any other officers from the

membership that the board determines to be appropriate and an executive director as set forth in the bylaws.

F. The chair and four voting members of the board of directors appointed by the chair, two of whom shall be public members, shall constitute the "bioscience authority executive committee". The executive director and chair of the board of directors shall be a nonvoting member of the executive committee. The executive committee shall have powers and duties as delegated to it by the board of directors.

G. If a vacancy occurs among the appointed voting members of the board of directors, the appointing authority of the former member shall appoint a replacement to serve out the term of that member. If an appointed member's term expires, the member shall continue to serve until another member is appointed.

H. The board of directors shall meet at the call of the chair and shall meet at least once every three months.

I. The board of directors shall maintain written minutes of all meetings of the authority and maintain other appropriate records, including financial transaction records in compliance with law and adequate to provide an accurate record for audit purposes pursuant to the Audit Act [12-6-1 to 12-6-14 NMSA 1978].

History: Laws 2017, ch. 134, § 3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

The reference in Subsection C to "Paragraph (5) of Subsection B" is an apparent reference to "Paragraph (6) of Subsection B".

Effective dates. — Laws 2017, ch. 134 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

9-15E-4. Limitations on director activities.

A. Except as provided in Subsection B of this section, members of the board of directors are public officers subject to the provisions of the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978].

B. Members of the board of directors shall not, within one year of having served as a director, accept employment with an entity that has benefited from a contractual or other activity with the authority. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced

pursuant to the provisions of Section 31-18-15 NMSA 1978; provided, however, that nothing contained herein shall be construed to prohibit a member of the board of directors who is employed by a research institution, a national laboratory or the spaceport authority that may have benefited from a contractual or other activity with the authority from continuing in that employment nor to have violated this section continuing in such employment. An alleged violation of this subsection may be reported to the attorney general or district attorney for enforcement.

History: Laws 2017, ch. 134, § 4.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 134 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

9-15E-5. Authority powers and duties.

A. The authority shall:

(1) advise the governor, the economic development department, the legislature and the New Mexico finance authority oversight committee on methods, proposals, programs and initiatives that may stimulate investment in bioscience industries and provide additional employment opportunities for New Mexico residents;

(2) make and execute all contracts and other instruments necessary or convenient to the exercise of its powers and duties;

(3) create programs to expand bioscience economic opportunities within New Mexico, including potential means of providing financial assistance and incentives for bioscience industries and facilities;

(4) create avenues of communication between New Mexico and representatives of bioscience industries;

(5) promote legislation that will further the goals of the authority and development of bioscience industries and facilities;

(6) oversee, produce or cause to have produced promotional literature related to explanation and fulfillment of the authority's goals;

(7) identify science and technology trends that are significant to bioscience enterprises and act as a clearinghouse for bioscience enterprise issues and information;

(8) coordinate and expedite the involvement of the state executive branch's bioscience-related development efforts;

(9) perform or cause to be performed environmental, transportation, communication, land use and other technical studies necessary or advisable for bioscience projects or programs; and

(10) actively recruit industries and establish programs that will result in the location and relocation of new bioscience industries in the state.

B. The authority may:

(1) solicit and accept federal, state, local and private grants of funds, property or financial or other aid in any form for the purpose of carrying out the provisions of the Bioscience Authority [Development] Act; and

(2) act as an applicant for bioscience facilities and assist in carrying out all tasks and functions for the acquisition or construction of bioscience facilities, including filing all necessary documents and follow-up of such filings with appropriate agencies.

C. In exercising its authority, the authority shall not incur debt as a general obligation of the state or pledge the full faith and credit of the state to repay debt.

History: Laws 2017, ch. 134, § 5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Effective dates. — Laws 2017, ch. 134 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

9-15E-6. Authority staff; contracts.

A. The executive director shall, in consultation with the board of directors, direct the affairs and business of the authority.

B. The authority may contract with any other competent private or public organization or individual to assist in the fulfillment of its duties.

History: Laws 2017, ch. 134, § 6.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 134 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

9-15E-7. Fund created.

A. The "bioscience development fund" is created in the state treasury. Separate accounts within the fund may be created for any project. Money in the fund, subject to appropriation by the legislature, may be expended by the authority for the purposes of carrying out the provisions of the Bioscience Development Act. Any general fund balance from money appropriated by the legislature in the fund shall revert at the end of a fiscal year.

B. Except as provided in this section, money received by the authority shall be deposited in the fund, including:

(1) money appropriated by the legislature;

(2) interest earned upon money in the fund;

(3) property or securities acquired through the use of money belonging to the fund;

(4) all earnings of property or securities acquired pursuant to Paragraph (3) of this subsection;

(5) all of the money received by the authority from a public or private source; and

(6) fees, rents or other charges imposed and collected by the authority.

C. Disbursements from the bioscience development fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of economic development or the secretary's designee pursuant to the Bioscience Development Act.

History: Laws 2017, ch. 134, § 7.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 134 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

9-15E-8. Report to the governor and the legislature.

The authority shall submit a report of its activities to the governor and to the appropriate interim committees of the legislature not later than October 1 of each year.

History: Laws 2017, ch. 134, § 8.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 134 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

ARTICLE 16
Regulation and Licensing Department

9-16-1. Short title.

Sections 17 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.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 297, § 34 made Laws 1983, ch. 297, § 17 effective July 1, 1983.

9-16-2. Purpose.

The purpose of the Regulation and Licensing Department Act 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 [repealed].

History: Laws 1983, ch. 297, § 18.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 297, § 34 made Laws 1983, ch. 297, § 18 effective July 1, 1983.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of law.

Laws 1983, ch. 297, § 33 repealed the provisions relating to the commerce and industry department. For present provisions, *see* 9-15-1 NMSA 1978 et seq. and 9-16-1 NMSA 1978 et seq., relating to new departments which assumed many of the functions of the commerce and industry department.

9-16-3. Definitions.

As used in the Regulation and Licensing Department Act:

A. "department" means the regulation and licensing department; and

B. "superintendent" means the superintendent of regulation and licensing.

History: Laws 1983, ch. 297, § 19.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 297, § 34 made Laws 1983, ch. 297, § 19 effective July 1, 1983.

9-16-4. Department established.

The "regulation and licensing department" is created in the executive branch. The department shall not be a cabinet department. The department shall consist of but not be limited to the following divisions:

A. the administrative services division;

B. the construction industries division;

C. the financial institutions division;

D. the securities division;

E. the manufactured housing division;

F. the alcoholic beverage control division; and

G. the cannabis control division.

History: Laws 1983, ch. 297, § 20; 1985, ch. 173, § 1; 1988, ch. 102, § 1; 2001, ch. 86, § 1; 2019, ch. 29, § 1; 2021 (1st S.S.), ch. 4, § 55.

ANNOTATIONS

Cross references. — For financial institutions and regulations and securities generally, *see* Chapter 58 NMSA 1978.

For construction industries licensing, *see* 60-13-1 NMSA 1978 et seq.

For manufactured housing, *see* 60-14-1 NMSA 1978 et seq.

The 2021 (1st S.S.) amendment, effective June 29, 2021, established the cannabis control division in the regulation and licensing department; added Subsection G.

Temporary provisions. — Laws 2021 (1st S.S.), ch. 4, § 70, effective June 29, 2021, provided:

A. On June 29, 2021, all functions, personnel, money, appropriations, records, furniture, equipment and other property of the department of health's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be transferred to the regulation and licensing department.

B. On June 29, 2021, all contractual obligations and other agreements of the department of health as they pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties are binding on the regulation and licensing department.

C. Statutory references to the department of health that pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be deemed to be references to the cannabis control division of the regulation and licensing department.

D. On June 29, 2021, any unexpended or unencumbered balance in the medical cannabis fund is transferred to the cannabis regulation fund.

E. Except to the extent any administrative rules are inconsistent with the provisions of this act, any administrative rules adopted by an officer, agency or other entity whose responsibilities have been transferred pursuant to the provisions of this act to another officer, agency or other entity remain in force until amended by the officer, agency or other entity to which the responsibility for the adoption of the rules has been transferred. To the extent any administrative rules are inconsistent with the provisions of this act, such rules are null and void.

The 2019 amendment, effective June 14, 2019, renamed the alcohol and gaming division to the alcoholic beverage control division; after "not be limited to", deleted "six" and added "the following", and after "divisions", deleted "as follows"; and in Subsection F, deleted "alcohol and gaming" and added "alcoholic beverage control".

Temporary provisions. — Laws 2019, ch. 29, § 5 provided that on June 14, 2019, all:

A. functions, personnel, appropriations, money, records, furniture, equipment and other property of the alcohol and gaming division of the regulation and licensing department are transferred to the alcoholic beverage control division of that department;

B. contractual obligations of the alcohol and gaming division of the regulation and licensing department shall be deemed to be references to the alcoholic beverage control division of that department; and

C. references in law to the alcohol and gaming division of the regulation and licensing department shall be deemed to be references to the alcoholic beverage control division of that department.

The 2001 amendment, effective July 1, 2001, added a sixth division, the alcohol and gaming commission, to the executive branch of 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.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 297, § 34 made Laws 1983, ch. 297, § 21 effective July 1, 1983.

9-16-6. Superintendent; duties and general powers.

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

B. To perform the superintendent's 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, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

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

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

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the superintendent's 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 the superintendent 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 residents 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 administratively attached agencies assistance as necessary to:

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

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

(c) provide implementation of licensure processes, budgeting, recordkeeping, procurement, contracting, hiring and supervision of staff and related administrative and clerical assistance for administratively attached agencies; and

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978]. Persons appointed to these positions shall serve at the pleasure of the superintendent.

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

D. The superintendent may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions; provided that where a licensing entity requires submission of fingerprints as part of the initial license application, and a licensee has provided fingerprints and the license has been issued, the licensing entity shall not require a licensee to submit fingerprints again to renew the license, but a licensee shall submit to a background investigation if required; and provided further that the prohibition against requiring additional

fingerprints shall not apply to the financial institutions division of the department when utilizing the nationwide multistate licensing system and registry.

E. No rule promulgated by the director of any division in carrying out the functions and duties of the department or a division shall be effective until approved by the superintendent, unless otherwise provided by statute. Unless otherwise provided by statute, all rules adopted, amended or repealed by the superintendent or the director of any division shall have notice provided and be conducted and filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: Laws 1983, ch. 297, § 22; 2019, ch. 209, § 1; 2021 (1st S.S.), ch. 4, § 56.

ANNOTATIONS

The 2021 (1st S.S.) amendment, effective June 29, 2021, revised and clarified the duties of the superintendent of regulation and licensing, removed provisions requiring the superintendent, division directors and certain department employees to post performance bonds as provided in the Surety Bond Act, and revised certain provisions related to the adoption, amendment, or repeal of rules by the superintendent or director of any division; in Subsection A, after the third occurrence of "the department", added "or a division of the department"; in Subsection B, in Paragraph B(9), after "provide", deleted "cooperation, at the request of heads of", and after "attached agencies", deleted "in order" and added "assistance as necessary", in Subparagraph B(9)(c), after the subparagraph designation, deleted "resolve by agreement the manner and extent to which the department shall", after "provide", added "implementation of licensure processes", after "recordkeeping", added "procurement, contracting, hiring and supervision of staff", and after "related", added "administrative and", and deleted Paragraphs B(11) and B(12); added new subsection designation "E"; and in Subsection E, after "duties of the", added "department or a", and after "Unless otherwise provided by statute", deleted "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 the superintendent. 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" and added "all rules adopted, amended or repealed by the superintendent or the director of any division shall have notice provided and be conducted and".

Temporary provisions. — Laws 2021 (1st S.S.), ch. 4, § 70, effective June 29, 2021, provided:

A. On June 29, 2021, all functions, personnel, money, appropriations, records, furniture, equipment and other property of the department of health's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be transferred to the regulation and licensing department.

B. On June 29, 2021, all contractual obligations and other agreements of the department of health as they pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties are binding on the regulation and licensing department.

C. Statutory references to the department of health that pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be deemed to be references to the cannabis control division of the regulation and licensing department.

D. On June 29, 2021, any unexpended or unencumbered balance in the medical cannabis fund is transferred to the cannabis regulation fund.

E. Except to the extent any administrative rules are inconsistent with the provisions of this act, any administrative rules adopted by an officer, agency or other entity whose responsibilities have been transferred pursuant to the provisions of this act to another officer, agency or other entity remain in force until amended by the officer, agency or other entity to which the responsibility for the adoption of the rules has been transferred. To the extent any administrative rules are inconsistent with the provisions of this act, such rules are null and void.

The 2019 amendment, effective July 1, 2020, prohibited the requirement of having to resubmit fingerprints to renew a business, professional or occupational license, and provided an exception; and in Subsection D, added "provided that where a licensing entity requires submission of fingerprints as part of the initial license application, and a licensee has provided fingerprints and the license has been issued, the licensing entity shall not require a licensee to submit fingerprints again to renew the license, but a licensee shall submit to a background investigation if required; and provided further that the prohibition against requiring additional fingerprints shall not apply to the financial institutions division of the department when utilizing the nationwide multistate licensing system and registry".

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 [Chapter 10, Article 9 NMSA 1978].

History: Laws 1983, ch. 297, § 23.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 297, § 34 made Laws 1983, ch. 297, § 23 effective July 1, 1983.

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. He shall appoint a "chief" to be the administrative head of any such bureau. The positions so appointed may be exempted from the Personnel Act [Chapter 10, Article 9 NMSA 1978] by action of the superintendent, except for the construction industries division trade bureaus created pursuant to Section 60-13-31 NMSA 1978. The chiefs of those bureaus shall be covered positions under the Personnel Act.

History: Laws 1983, ch. 297, § 24; 1997, ch. 181, § 1.

ANNOTATIONS

The 1997 amendment, effective July 1, 1997, rewrote the third sentence which read "The positions so appointed are exempt from the Personnel Act" and added the last sentence.

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, [Chapter 10, Article 9 NMSA 1978]; 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. 83-03.

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.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 297, § 34 made Laws 1983, ch. 297, § 25 effective July 1, 1983.

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.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 297, § 34 made Laws 1983, ch. 297, § 26 effective July 1, 1983.

9-16-11. Director of financial institutions division; securities division; exemptions from authority of superintendent.

The responsibilities of the director of the financial institutions division, the director of the securities division and those of the chief of the savings and loan bureau under Sections 58-1-20 through 58-1-22, 58-1-25, 58-1-26, 58-1-28, 58-1-29, 58-1-34, 58-1-38, 58-1-46, 58-1-48, 58-1-54 through 58-1-58, 58-1-61, 58-1-62, 58-1-64, 58-1-65, 58-1-69, 58-1-72 through 58-1-75, 58-1-85, 58-2-5, 58-4-3, 58-4-4, 58-4-7, 58-4-9, 58-4-11, 58-5-2, 58-5-3, 58-7-9, 58-9-7 through 58-9-10, 58-10-11 through 58-10-14, 58-10-16, 58-10-17, 58-10-28, 58-10-32, 58-10-35, 58-10-46, 58-10-53, 58-10-72, 58-10-73, 58-10-76, 58-10-77, 58-10-79 through 58-10-85, 58-10-87, 58-10-92, 58-10-94, 58-10-97,

58-10-101, 58-11-3, 58-11-5, 58-11-6, 58-11-8, 58-11-24, 58-11-26, 58-11-32, 58-12-3, Subsection C of Section 58-12-4, 58-12-7, 58-12-8, 58-12-13, 58-15-5, 58-15-8 through 58-15-13, 58-15-18, 58-15-25, 58-20-1, 61-18-5, 61-18-6, 61-18-16, 61-18-19, 61-18-22, 61-18-33, 61-18-34, 61-18-41, 61-18-46, 61-18-47, 61-18-49, 61-18-50, 61-18-52, 61-18-53 and 61-18-57 NMSA 1978 and Subsections A, B and D of Section 28, Sections 13, 16, 20 through 36, 38, 44, 48, 51, 53 and 56 of the New Mexico Securities Act of 1986 are hereby explicitly exempted from the authority of the superintendent of regulation and licensing as set forth in Subsection B of Section 9-16-6 NMSA 1978.

History: Laws 1983, ch. 297, § 27; 1985, ch. 173, § 2; 1986, ch. 7 § 57.

ANNOTATIONS

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.

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.

Severability. — Laws 1986, ch. 7, § 60 provided for the severability of the act if any part or application is held invalid.

9-16-12. Construction industries commission; exercise of powers and duties exempt from authority of superintendent.

All responsibilities of the construction industries commission under Sections 60-13-6, 60-13-9 through 60-13-11, 60-13-13.2, 60-13-14 through 60-13-16, 60-13-18, 60-13-23 through 60-13-24, 60-13-27, 60-13-28, 60-13-36, 60-13-38, 60-13-41, 60-13-43, 60-13-44, 60-13-45, 60-13-49, 60-13-53, 60-13-55, 60-13-57, 61-1-1 through 61-1-33, 70-5-3 through 70-5-7, 70-5-11 through 70-5-15 and 70-5-18 NMSA 1978 are hereby explicitly exempted from the authority of the superintendent under the provisions of Subsection B of Section 9-16-6 NMSA 1978.

History: Laws 1983, ch. 297, § 28; 1989, ch. 6, § 65.

9-16-13. Mobile [manufactured] housing committee; exercise of powers and duties exempt from authority of superintendent.

All responsibilities of the mobile [manufactured] housing committee under Sections 60-14-4 through 60-14-9, 60-14-12 and 60-14-14 NMSA 1978 are hereby explicitly exempted from the authority of the superintendent of regulation and licensing under the provisions of Subsection B of Section 22 [9-16-6 NMSA 1978] of this act [9-16-1 to 9-16-13 NMSA 1978].

History: Laws 1983, ch. 297, § 29.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 297, § 34 made Laws 1983, ch. 297, § 29 effective July 1, 1983.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1983, ch. 295, § 11, changed the name of the mobile housing committee, 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 manufactured housing division, other than money earmarked for revolving funds, shall be deposited with the state treasurer and held in a separate suspense account for each division. In the seventy-sixth fiscal year, all money deposited in the suspense accounts shall be transferred monthly to the general fund until the sum of all money transferred to the general fund equals the total amount deposited and transferred to the general fund from those divisions in the seventy-fourth fiscal year. All additional money deposited in the divisions' suspense accounts during the seventy-sixth fiscal year shall be transferred to the regulation and licensing department operating fund on June 30, 1988.

C. In the seventy-seventh fiscal year and each fiscal year thereafter, on the last day of each month, the department shall transfer all money received during the month from the divisions' suspense accounts to the general fund.

History: 1978 Comp., § 9-16-14, enacted by Laws 1987, ch. 298, § 1; 1991, ch. 217, § 1.

ANNOTATIONS

The 1991 amendment, effective July 1, 1991, substituted "manufactured" for "mobile" in the first sentence in Subsection B; substituted "general fund" for "regulation and

licensing department operating fund" at the end of Subsection C; and deleted former Subsection D, relating to appropriations.

9-16-15. Mortgage regulatory fund; created; purpose; appropriation.

A. The "mortgage regulatory fund" is created as a nonreverting fund in the state treasury and shall be administered by the financial institutions division of the regulation and licensing department. The fund shall consist of application, licensing, renewal, examination, investigation and any other fees received that are associated with the costs of administering the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 to 58-21B-24 NMSA 1978], fees specified in Subsection E of Section 58-21-5 NMSA 1978 and any money that is appropriated or donated or that otherwise accrues to the fund. Money in the fund shall be invested by the state investment officer in the manner that land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Income from investment of the fund shall be credited to the fund.

B. Money in the mortgage regulatory fund is appropriated to the financial institutions division of the regulation and licensing department to carry out the provisions of the New Mexico Mortgage Loan Originator Licensing Act and the Mortgage Loan Company Act.

C. Money shall be disbursed from the mortgage regulatory fund only on warrant of the secretary of finance and administration upon vouchers signed by the director of the financial institutions division or the director's authorized representative. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

History: Laws 2009, ch. 122, § 59.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 122, § 61 made the provisions of Laws 2009, ch. 122, § 59 effective July 31, 2009.

Severability. — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

9-16-16. State financial regulation fund; created; purpose.

The "state financial regulation fund" is created as a nonreverting fund in the state treasury. The fund consists of money distributed to the financial institutions division of the regulation and licensing department pursuant to the consent judgment entered by the court in litigation between mortgage lenders and various states, including New Mexico, and filed April 4, 2012 in the United States district court for the District of Columbia and of income from the investment of the fund. The fund shall be

administered by the financial institutions division of the regulation and licensing department. Money in the fund is subject to appropriation by the legislature to the financial institutions division to support and improve state financial regulation and supervision as provided in the consent judgment. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the director of the financial institutions division or the director's authorized representative.

History: Laws 2013, ch. 11, § 1 and Laws 2013, ch. 69, § 1.

ANNOTATIONS

Compiler's notes. — Laws 2013, ch. 11, § 1 and Laws 2013, ch. 69, § 1, both effective June 14, 2013, enacted identical new sections. The section was set out as enacted by Laws 2013, ch. 69, § 1. *See* 12-1-8 NMSA 1978.

ARTICLE 17
General Services Department

9-17-1. Short title.

Chapter 9, Article 17 NMSA 1978 may be cited as the "General Services Department Act".

History: Laws 1983, ch. 301, § 1; 2009, ch. 70, § 1.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, changed the reference of the act to the Chapter and Article of the NMSA 1978.

9-17-2. Purpose.

The purpose of the General Services Department Act 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.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 301, § 85 made Laws 1983, ch. 301, § 2 effective July 1, 1983.

9-17-3. General services department; creation; transfer and merger of division functions; merger and creation of divisions.

A. The "general services department" is created. The department shall consist of those divisions created by law or executive order, as modified by executive order pursuant to Subsection C of this section, including:

(1) the administrative services division;

(2) the facilities management division;

(3) the purchasing division;

(4) the risk management division; and

(5) the transportation services division.

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

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

History: Laws 1983, ch. 301, § 3; 1984, ch. 64, § 1; 1994, ch. 119, § 12; 1995, ch. 161, § 1; 2007, ch. 290, § 10; 2013, ch. 115, § 7.

ANNOTATIONS

Cross references. — For public purchases, *see* Chapter 13 NMSA 1978.

For property control, *see* Chapter 15, Article 3B NMSA 1978.

For risk management, *see* 15-7-2 NMSA 1978 et seq.

The 2013 amendment, effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; deleted former Paragraph (2) of Subsection A, which included the building services division in the general services department; and in Paragraph (2) of Subsection A, deleted "property control" and added "facilities management" before "division".

Temporary provisions. — Laws 2013, ch. 115, § 29 provided that on July 1, 2013:

A. all functions, personnel, appropriations, money, records, equipment, supplies and other property of the building services division of the general services department shall be transferred to the facilities management division of the general services department;

B. all contracts of the building services division of the general services department shall be binding and effective on the facilities management division of the general services department; and

C. all references in law to the building services division of the general services department shall be deemed to be references to the facilities management division of the general services department.

Laws 2013, ch. 115, § 30 provided that on July 1, 2013:

A. all functions, personnel, appropriations, money, records, equipment, supplies and other property of the property control division of the general services department shall be transferred to the facilities management division of the general services department;

B. all contracts of the property control division of the general services department shall be binding and effective on the facilities management division of the general services department; and

C. all references in law to the property control division of the general services department shall be deemed to be references to the facilities management division of the general services department.

The 2007 amendment, effective July 1, 2007, eliminated the information systems division in the general services department.

The 1995 amendment, effective June 16, 1995, substituted "transportation services" for "motor pool" in Paragraph (7) in Subsection A.

The 1994 amendment, effective May 18, 1994, deleted "but not limited to" at the end of Subsection A, added "and" in Paragraph A(6), added Paragraph A(7), and in Subsection B, added "of general services" and deleted "thereof" following "and the divisions."

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.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 301, § 85 made Laws 1983, ch. 301, § 4 effective July 1, 1983.

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, 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 [Chapter 10, Article 9 NMSA 1978]. 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 of 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 notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: Laws 1983, ch. 301, § 5.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 301, § 85 made Laws 1983, ch. 301, § 5 effective July 1, 1983.

9-17-6. General services department; administratively attached agency.

The personnel board and office are administratively attached to the general services department, as provided in Section 10-9-11 NMSA 1978.

History: Laws 1983, ch. 301, § 6; 1984, ch. 64, § 2; 2009, ch. 146, § 1.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, deleted former Subsection B, which provided that the information systems council is administratively attached to the general services department.

9-17-7. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1998, ch. 22, § 1 recompiled former 9-17-7 NMSA 1978 as 9-5A-8 NMSA 1978, effective July 1, 1998.

9-17-8. Equipment replacement plans; equipment replacement revolving funds.

A. In order to plan for the expenditure of capital investments necessary to provide goods and services to the state and its agencies and to local public bodies and other enterprise customers, the general services department shall establish and maintain a five-year equipment replacement plan for each of the department's enterprise functions. No later than December 1 of each year, the plans shall be submitted to the department of finance and administration and to the legislature, along with a reconciliation report reflecting financial activity in the preceding fiscal year in each of the equipment replacement revolving funds established pursuant to this section.

B. Upon the request of the secretary of general services, the state treasurer shall establish such "equipment replacement revolving funds" in the state treasury as are necessary to administer each of the general services department's enterprise functions. The funds shall consist of legislative appropriations to the funds and transfers made to the funds pursuant to Subsections C and D of this section. Income from investment of

the funds shall be credited to the funds, and money in the funds shall not revert at the end of a fiscal year. Expenditures from the funds shall be made only pursuant to an appropriation from the legislature and only for the purpose of acquiring and replacing capital equipment used to provide enterprise services, pursuant to the five-year equipment replacement plans.

C. The general services department shall record amounts due to the equipment replacement revolving funds each calendar quarter, based on the calculation of depreciation applicable to each enterprise as reflected in the department's published cost structures for calculation of rates for services. Transfers to the funds shall be made from the operating funds of each enterprise in amounts that reconcile with the recorded amounts due.

D. The general services department may make initial transfers from its operating funds to establish the beginning fund balances as of July 1, 2009. The transfers shall be based on amounts so designated in the audited financial statements of the department as of June 30, 2009.

History: Laws 2009, ch. 70, § 2.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 70 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

9-17-9. Interagency pharmaceuticals purchasing council; creation; membership; duties.

A. The "interagency pharmaceuticals purchasing council" is created and is administratively attached to the general services department. The council shall:

(1) review and coordinate cost-containment strategies for the procurement of pharmaceuticals and pharmacy benefits and the pooling of risk for pharmacy services by the constituent agencies;

(2) identify ways to leverage constituent agencies' pharmaceutical and pharmacy benefits procurement to maximize the purchasing power of New Mexico residents purchasing pharmaceuticals or pharmacy benefits in the private sector; and

(3) identify other cost-saving opportunities for New Mexico residents purchasing pharmaceuticals or pharmacy benefits in the private sector.

B. Pursuant to its review of these strategies and related data, the interagency pharmaceuticals purchasing council shall decide by vote which cost-containment strategies it will recommend. Constituent agencies shall make their own procurement

decisions. The secretary of general services shall serve as director of the council and shall be responsible for the coordination of the day-to-day activities of the council.

C. The interagency pharmaceuticals purchasing council shall be composed of the following eleven members serving as voting, ex-officio members:

(1) the secretary of human services or the secretary's designee;

(2) the secretary of health or the secretary's designee;

(3) the secretary of children, youth and families or the secretary's designee;

(4) the secretary of corrections or the secretary's designee;

(5) the director of the risk management division of the general services department or the director's designee;

(6) the executive director of the retiree health care authority or the executive director's designee;

(7) the executive director of the public school insurance authority or the executive director's designee;

(8) the superintendent of the Albuquerque public school district or the superintendent's designee;

(9) the president of the university of New Mexico or the president's designee; and

(10) two members, appointed by the governor, who are officers of, or representative of organizations that represent, county, municipal or local government entities that participate in consolidated purchasing of pharmaceuticals or pharmacy benefits with other constituent agencies.

D. The interagency pharmaceuticals purchasing council shall convene its first meeting by September 1, 2019 at the call of the secretary of general services. After the initial meeting of the council, it shall meet at least once quarterly at the call of the secretary of general services. Meetings of the council shall be subject to the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]. In addition to notice provided pursuant to that act, the secretary of general services shall provide written notice of each scheduled meeting of the council to the director of the legislative finance committee at least ten days before each meeting.

E. The interagency pharmaceuticals purchasing council shall review and coordinate cost-containment strategies for the procurement of pharmaceuticals and pharmacy

benefits and the pooling of risk for pharmacy services by the constituent agencies. The cost-containment strategies that the council shall examine shall include:

(1) the benchmarking of pricing for pharmaceuticals and pharmacy benefits to the pricing that the state's medical assistance plans achieve for pharmaceuticals and pharmacy benefits; provided that the human services department [health care authority department] shall seek federal authorization prior to making any changes to medical assistance pharmaceuticals purchasing or pharmacy benefits;

(2) active medical management to optimize health outcomes and reduce costs;

(3) the establishment of a common formulary for all pharmaceuticals and pharmacy benefits plans offered by constituent agencies;

(4) a single purchase agreement for all constituent agencies' pharmaceuticals and pharmacy benefits;

(5) common procurement of expert services, including, at minimum, pharmacy benefits management, pharmacy benefits management oversight services, medical direction and actuarial services;

(6) identifying any opportunities to consolidate purchasing among two or more constituent agencies;

(7) identifying any opportunities for pooling risk among two or more constituent agencies or populations the constituent agencies serve;

(8) identifying any opportunities for consolidating purchasing with other entities and states of the United States;

(9) ensuring that all agencies, programs, clinics, hospitals and other health-related centers and entities, including those identified by the human services department [health care authority department] pursuant to Paragraph (3) of Subsection A of Section 27-2-12.13 NMSA 1978, that are eligible for pharmaceutical discounts pursuant to Section 340B of the federal Public Health Service Act participate in that Section 340B federal pharmaceutical price discount program;

(10) identifying any opportunities for maximizing the use of generic pharmaceuticals where safe and cost-effective to do so;

(11) negotiating advantageous pricing and incentives with insurers, pharmacy benefits managers, pharmacies, manufacturers, distributors and vendors of pharmaceuticals and other third-party entities involved in supplying pharmaceuticals, pharmacy benefits and management services to the council's constituent entities;

(12) identifying ways to leverage constituent agencies' pharmaceutical and pharmacy benefits procurement to maximize the purchasing power of New Mexico residents purchasing pharmaceuticals and pharmacy benefits in the private sector;

(13) identifying other cost-saving opportunities for New Mexico residents purchasing pharmaceuticals or pharmacy benefits in the private sector; and

(14) identifying any other opportunities for maximizing efficiency and a high standard of health care quality.

F. The legislative finance committee shall annually review and validate the interagency pharmaceuticals purchasing council's progress. The legislative finance committee shall incorporate this information into its budget and policy analysis and recommendations for the council or any of the council's implementing constituent agencies.

G. As used in this section, "constituent agency" means:

(1) the human services department [health care authority department], including any medical assistance program it administers;

(2) the department of health;

(3) the children, youth and families department;

(4) the corrections department;

(5) the risk management division of the general services department;

(6) the retiree health care authority;

(7) the public school insurance authority;

(8) the publicly funded health care program of the Albuquerque public school district;

(9) the university of New Mexico health benefits program for university employees and retirees;

(10) the university of New Mexico hospitals; or

(11) any local, county or municipal government that opts to participate in consolidated pharmaceuticals or pharmacy benefit purchasing.

History: Laws 2019, ch. 91, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

Effective dates. — Laws 2019, ch. 91 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

ARTICLE 18
Labor Department (Repealed.)

9-18-1. Repealed.

History: Laws 1987, ch. 342, § 1; 1993, ch. 16, § 1; 1993, ch. 25, § 1; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 9-18-1 NMSA 1978, as enacted by Laws 1987, ch. 342, § 1, relating to the short title, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-18-2. Repealed.

History: Laws 1987, ch. 342, § 2; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 9-18-2 NMSA 1978, as enacted by Laws 1987, ch. 342, § 2, relating to definitions, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-18-3. Repealed.

History: Laws 1987, ch. 342, § 3; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 9-18-3 NMSA 1978, as enacted by Laws 1987, ch. 342, § 3, relating to purpose, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-18-4. Repealed.

History: Laws 1987, ch. 342, § 4; 2005, ch. 110, § 7; 2005, ch. 111, § 1; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 9-18-4 NMSA 1978, as enacted by Laws 1987, ch. 342, § 4, relating to labor department established, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-18-5. Repealed.

History: Laws 1987, ch. 342, § 5; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 9-18-5 NMSA 1978, as enacted by Laws 1987, ch. 342, § 5, relating to agencies abolished, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-18-6. Repealed.

History: Laws 1987, ch. 342, § 6; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 9-18-6 NMSA 1978, as enacted by Laws 1987, ch. 342, § 6, relating to secretary of labor and appointment by governor, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-18-7. Repealed.

History: Laws 1987, ch. 342, § 7; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 9-18-7 NMSA 1978, as enacted by Laws 1987, ch. 342, § 7, relating to secretary's duties and general powers, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-18-8. Repealed.

History: Laws 1987, ch. 342, § 8; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 9-18-8 NMSA 1978, as enacted by Laws 1987, ch. 342, § 8, relating to administratively attached agencies, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-18-9. Repealed.

History: Laws 1987, ch. 342, § 9; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 9-18-9 NMSA 1978, as enacted by Laws 1987, ch. 342, § 9, relating to directors, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-18-10. Repealed.

History: Laws 1987, ch. 342, § 10; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 9-18-10 NMSA 1978, as enacted by Laws 1987, ch. 342, § 10, relating to bureaus and chiefs, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-18-11. Repealed.

History: Laws 1987, ch. 342, § 11; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 9-18-11 NMSA 1978, as enacted by Laws 1987, ch. 342, § 11, relating to Personnel Act coverage, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-18-12. Repealed.

History: Laws 1987, ch. 342, § 12; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 9-18-12 NMSA 1978, as enacted by Laws 1987, ch. 342, § 12, relating to cooperation with the federal government, authority of secretary and single state agency status, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-18-13. Repealed.

History: Laws 1987, ch. 342, § 13; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 9-18-13 NMSA 1978, as enacted by Laws 1987, ch. 342, § 13, relating to advisory committees, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-18-14. Repealed.

History: Laws 1987, ch. 342, § 14; 2005, ch. 110, § 8; 2005, ch. 111, § 2; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 9-18-14 NMSA 1978, as enacted by Laws 1987, ch. 342, § 14, relating to organizational units of the department, powers and duties specified by law and access to information, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

9-18-15. Repealed.

History: Laws 1993, ch. 16, § 2; 1993, ch. 25, § 2; repealed by Laws 2007, ch. 200, § 24.

ANNOTATIONS

Repeals. — Laws 2007, ch. 200, § 24 repealed 9-18-15 NMSA 1978, as enacted by Laws 1993, ch. 16, § 2, and Laws 1993, ch. 25, § 2, relating to disclosure of information, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

ARTICLE 19
Department of Public Safety

9-19-1. Short title.

Chapter 9, Article 19 NMSA 1978 may be cited as the "Department of Public Safety Act".

History: 1978 Comp., § 9-18-1, enacted by Laws 1987, ch. 254, § 1; 1989, ch. 204, § 1.

9-19-2. Definitions.

As used in the Department of Public Safety Act:

A. "department" means the department of public safety and

B. "secretary" means the secretary of public safety.

History: 1978 Comp., § 9-18-2, enacted by Laws 1987, ch. 254, § 2; 1989, ch. 204, § 2.

9-19-3. Purpose.

The purpose of the Department of Public Safety Act is to establish a single, unified department to consolidate state law enforcement and safety functions in order to provide better management, real coordination and more efficient use of state resources and manpower in responding to New Mexico's public safety needs and problems and to improve the professionalism of the state's law enforcement and investigative functions and personnel.

History: 1978 Comp., § 9-18-3, enacted by Laws 1987, ch. 254, § 3; 1989, ch. 204, § 3.

9-19-4. Department established.

There is created in the executive branch the "department of public safety". The department shall be a cabinet department and shall consist of, but not be limited to:

A. the New Mexico state police division;

B. the New Mexico law enforcement academy;

C. the technical support division;

D. the administrative services division; and

E. the information technology division.

History: 1978 Comp., § 9-18-4, enacted by Laws 1987, ch. 254, § 4; 1989, ch. 204, § 4; 1998 (1st S.S.), ch. 10, § 3; 2005, ch. 110, § 9; 2007, ch. 291, § 7; 2015, ch. 3, § 1.

ANNOTATIONS

Cross references. — For state police, *see* 29-2-1 to 29-2-29 NMSA 1978.

For law enforcement training, *see* 29-7-1 to 29-7-13 NMSA 1978.

The 2015 amendment, effective July 1, 2015, effective July 1, 2015, provided for the reorganization of the department of public safety by removing the special investigations division, the training and recruiting division, and the motor transportation division from their current organizational position within the department of public safety; in the introductory paragraph, after "limited to", deleted "five program divisions, an administrative division and an information technology division as follows"; deleted Subsections B, C and F, relating to the special investigations division, the training and recruiting division, and the motor transportation division; added the present Subsection B, and redesignated the subsequent subsections accordingly.

Temporary provisions. — Laws 2015, ch. 3, § 43 provided:

On July 1, 2015:

A. all personnel, appropriations, money, records, equipment, supplies and other property of the training and recruiting division of the department of public safety shall be transferred to the New Mexico law enforcement academy of the department of public safety;

B. all contracts pertaining to the training and recruiting division of the department of public safety shall be binding and effective on the New Mexico law enforcement academy of the department of public safety; and

C. all references in law to the training and recruiting division of the department of public safety shall be deemed to refer to the New Mexico law enforcement academy of the department of public safety.

Laws 2015, ch. 3, § 44 provided:

On July 1, 2015:

A. all personnel, appropriations, money, records, equipment, supplies and other property of the training and recruiting division of the department of public safety shall be transferred to the New Mexico law enforcement academy division of the department of public safety;

B. all contracts pertaining to the training and recruiting division of the department of public safety shall be binding and effective on the New Mexico law enforcement academy division of the department of public safety; and

C. all references in law to the training and recruiting division of the department of public safety shall be deemed to refer to the New Mexico law enforcement academy division of the department of public safety.

The 2007 amendment, effective July 1, 2007, changed the name of the technical and emergency support bureau to the technical support division.

The 2005 amendment, effective June 17, 2005, created the information technology division within the department of public safety.

The 1998 amendment, effective July 1, 1998, added Subsection F and made minor related and stylistic changes.

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.

ANNOTATIONS

Effective dates. — Laws 1987, ch. 254, § 28 made Laws 1987, ch. 254, § 5 effective July 1, 1987.

9-19-6. Secretary; duties and general powers.

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

B. To perform the secretary's 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, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

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

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

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

(5) 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 the secretary is responsible and to enforce those orders and instructions by appropriate administrative action 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 [Chapter 10, Article 9 NMSA 1978]. 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 the secretary 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. Nothing in this section erodes or changes the powers and duties of the law enforcement academy board as set forth in Sections 29-7-3 and 29-7-4 NMSA 1978. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation in the state and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing.

F. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: 1978 Comp., § 9-18-6, enacted by Laws 1987, ch. 254, § 6; 1989, ch. 204, § 5; 2015, ch. 3, § 2.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, provided for the reorganization of the department of public safety by clarifying references to the secretary of public safety; changed "he" to "the secretary", and "his" to "the secretary's" throughout the section; in Subsection B, Paragraph 1, after "regulations," deleted the remainder of the sentence; in Subsection B, Paragraph 5, after the second occurrence of "action," deleted "or actions"; and in Subsection E, added the third sentence, relating to the law enforcement academy board.

Effect of adoption of procedural rules and regulations. — A written manual adopted pursuant to statute containing policies and procedures governing the employment of state police officers created an implied contract regarding terms of employment. *Whittington v. N.M. Dep't of Pub. Safety*, 2004-NMCA-124, 136 N.M. 503, 100 P.3d 209, cert. denied, 2004-NMCERT-010, 136 N.M. 541, 101 P.3d 807.

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.

ANNOTATIONS

Effective dates. — Laws 1989, ch. 72 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989, 90 days after the adjournment of the legislature.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

9-19-6.2. Secretary of public safety; additional powers; public safety officer education scholarship program.

A. The secretary of public safety may enter into an agreement with the board of regents of the New Mexico military institute under which the institute would offer public safety officer education scholarships to New Mexico residents interested in careers as public safety officers. The agreement may provide criteria for recruiting scholarship applicants and awarding scholarships and for internship programs at public safety agencies for scholarship recipients.

B. Subject to available appropriations, the secretary of public safety may transfer funds each fiscal year to the board of regents of the New Mexico military institute for the scholarship program for New Mexico residents interested in careers as public safety officers.

History: Laws 2005, ch. 162, § 2.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 162 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

9-19-6.3. Secretary; power to manage a criminal records database.

The secretary may create, access, maintain and otherwise manage a criminal records database that merges criminal records data from multiple databases and gives courts and law enforcement agencies access to comprehensive criminal background records of criminal suspects and defendants.

History: Laws 2016, ch. 10, § 1.

ANNOTATIONS

Effective dates. — Laws 2016, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

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 of the New Mexico state police 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 New Mexico state police division shall also include:

(1) the special investigations unit, which shall consist of the enforcement personnel of the former special investigations division and civilian 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 unit is responsible for the enforcement of the New Mexico Bingo and Raffle Act [60-2F-1 to 60-2F-26 NMSA 1978] and the Liquor Control Act [60-3A-1 NMSA 1978];

(2) the training and recruiting bureau, which shall consist of the personnel of the New Mexico state police training division and all civilian personnel and functions of the department as the secretary may transfer to the bureau;

(3) the motor transportation police bureau, which shall consist of the enforcement and civilian personnel of the former motor transportation division. The bureau is responsible for enforcing the Motor Carrier Act [65-2A-1 to 65-2A-41 NMSA 1978], the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978], the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978, except 66-7-102.1 NMSA 1978] and the Criminal Code [Chapter 30 NMSA 1978]; and

(4) civilian employees of the former motor transportation division or the former special investigations division, who shall be subject to the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978].

C. The New Mexico law enforcement academy shall consist of personnel of the New Mexico law enforcement academy and such other functions as the secretary may transfer to it.

D. The technical support division shall consist of functions such as crime laboratory and records.

E. The administrative services division shall consist of the administrative services as the secretary deems necessary.

F. The information technology division shall consist of such functions as computer and technology support as the secretary deems necessary.

History: 1978 Comp., § 9-18-7, enacted by Laws 1987, ch. 254, § 7; 1989, ch. 204, § 6; 2007, ch. 291, § 8; 2015, ch. 3, § 3.

ANNOTATIONS

Cross references. — For the Liquor Control Act, *see* 60-3A-1 NMSA 1978 and notes thereto.

The 2015 amendment, effective July 1, 2015, provided for the reorganization of the department of public safety by placing the special investigations division, the training and recruiting division, and the motor transportation division as bureaus under the New

Mexico state police division of the department of public safety, and by clarifying the functions of other divisions within the department of public safety; in the introductory paragraph of Subsection B, after "personnel", deleted "including all communications equipment operators" and after the second occurrence of "New Mexico state police", deleted "uniform division and the commissioned officers and civilian personnel of the New Mexico state police criminal division", and added the last sentence; redesignated Subsection C as Paragraph 1 of Subsection B; in the first sentence of Subsection B, Paragraph 1, after the first occurrence of "special investigations", deleted "division" and added "unit, which", after "personnel of the", deleted "department of alcoholic beverage control" and added "former special investigations division", after "division", deleted "such other" and added "and civilian", in the second sentence of Subsection B, Paragraph 1, deleted "division" and added "unit", and added "New Mexico" to the "Bingo and Raffle Act"; added Paragraphs 2 through 4 of Subsection B; added a new Subsection C relating to the New Mexico law enforcement academy; in Subsection D, after "such as", deleted "communications"; deleted former Subsection E and redesignated former Subsection F as the new Subsection E; in Subsection E, after the second occurrence of "services", deleted "and services divisions of the New Mexico state police and those administrative support personnel of the other existing departments, divisions or offices"; and added a new Subsection F relating to the information technology division.

Temporary provisions. — Laws 2015, ch. 3, § 43 provided:

On July 1, 2015:

A. all personnel, appropriations, money, records, equipment, supplies and other property of the special investigations and motor transportation divisions of the department of public safety shall be transferred to the New Mexico state police division of the department of public safety;

B. all contracts pertaining to the special investigations and motor transportation divisions of the department of public safety shall be binding and effective on the department of public safety; and

C. all references in law to the special investigations or motor transportation division of the department of public safety shall be deemed to refer to the New Mexico state police division of the department of public safety.

Laws 2015, ch. 3, § 44 provided:

On July 1, 2015:

A. all personnel, appropriations, money, records, equipment, supplies and other property of the training and recruiting division of the department of public safety shall be transferred to the New Mexico law enforcement academy division of the department of public safety;

B. all contracts pertaining to the training and recruiting division of the department of public safety shall be binding and effective on the New Mexico law enforcement academy division of the department of public safety; and

C. all references in law to the training and recruiting division of the department of public safety shall be deemed to refer to the New Mexico law enforcement academy division of the department of public safety.

The 2007 amendment, effective July 1, 2007, eliminated the staff of the governor's organized crime prevention commission as a part of the special investigations division, and in Subsection D, provided that the technical support division shall perform functions such as communications, crime laboratory and records.

9-19-8. Administratively attached agencies.

The governor's organized crime prevention commission and the law enforcement certification board are administratively attached to the department, and the New Mexico law enforcement standards and training council is administratively attached to the New Mexico law enforcement academy 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; 2022, ch. 56, § 2; 2023, ch. 86, § 1.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, changed the New Mexico law enforcement standards and training council's administrative attachment from the department of public safety to the New Mexico law enforcement academy; and after "organized crime prevention commission", deleted "the New Mexico law enforcement standards and training council", and after "attached to the department", added "and the New Mexico law enforcement standards and training council is administratively attached to the New Mexico law enforcement academy".

Temporary provisions. — Laws 2023, ch. 86, § 15 provided that the rules of the New Mexico law enforcement academy board shall continue in effect until amended or repealed by the New Mexico law enforcement standards and training council or the law enforcement certification board, as applicable.

The 2022 amendment, effective July 1, 2023, provided that the New Mexico law enforcement standards and training council is administratively attached to the department of public safety in accordance with the Executive Reorganization Act; and after "crime prevention commission", added "the New Mexico law enforcement standards and training council", and preceding "board", deleted "academy" and added "certification".

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 [Chapter 10, Article 9 NMSA 1978].

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

ANNOTATIONS

Effective dates. — Laws 1987, ch. 254, § 28 made Laws 1987, ch. 254, § 9 effective July 1, 1987.

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. He shall employ a chief to be administrative head of each bureau.

History: 1978 Comp., § 9-18-10, enacted by Laws 1987, ch. 254, § 10; 1989, ch. 204, § 8.

9-19-11. Advisory commission.

A. There is created the "public safety advisory commission" composed of seven citizens of New Mexico appointed by the governor with the consent of the senate for staggered terms of three years ending on January 1; provided that in making the initial appointments, three members shall be appointed for terms of three years each, two members shall be appointed for terms of two years each and two members shall be appointed for terms of one year each. Thereafter, all appointments shall be made for terms of three years.

B. The commission shall advise the secretary on policy matters respecting the activities of the department and shall conduct disciplinary proceedings for any officer of the department state police division as required by Section 29-2-11 NMSA 1978. The disciplinary hearings shall be a matter of record and shall be conducted in the manner provided for in Section 29-2-11 NMSA 1978. The commission shall serve its findings and conclusions on the secretary for execution.

History: 1978 Comp., § 9-18-11, enacted by Laws 1987, ch. 254, § 12; 1989, ch. 204, § 9.

9-19-12. Sexual assault examination kit processing grant program; powers and duties; sexual assault examination kit processing grant fund created.

A. As used in this section:

(1) "department" means the department of public safety; and

(2) "grant program" means the sexual assault examination kit processing grant program established pursuant to this section.

B. The department shall establish and administer a grant program to award funds to state and local law enforcement agencies for the processing of sexual assault examination kits.

C. Grant funds may be used only for the processing by a state or municipal crime laboratory of biological evidence that was collected in relation to a sexual assault.

D. The department:

(1) shall establish:

(a) grant program application procedures;

(b) guidelines for the grant amounts to be awarded; and

(c) criteria for evaluating grant program applications; and

(2) may establish additional eligibility criteria for grant program applications.

E. Annually, on or before January 1, the department shall provide a report to the taxation and revenue department detailing the results and performance of the grant program.

F. The "sexual assault examination kit processing grant fund" is created in the state treasury. The fund consists of voluntary tax refund contributions, gifts, grants and donations. Balances remaining in the fund at the end of a fiscal year shall not revert to any other fund. The department shall administer the fund, and money in the fund is subject to appropriation by the legislature to the department to administer the grant program. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of public safety or the secretary's authorized representative.

G. A person may make a gift or donation to the sexual assault examination kit processing grant fund through the department.

History: Laws 2017, ch. 116, § 2.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 116 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

9-19-13. Repealed.

History: Laws 2017, ch. 98, § 2; repealed by Laws 2017, ch. 98, § 4.

ANNOTATIONS

Repeals. — Laws 2017, ch. 98, § 4 repealed 9-19-13 NMSA 1978, as enacted by Laws 2017, ch. 98, § 2, relating to sexual assault examination kit fund, effective July 1, 2021. For provisions of former section, *see* the 2020 NMSA 1978 on *NMOneSource.com*.

9-19-14. Law enforcement retention fund; created; retention differential disbursement; reporting.

A. The "law enforcement retention fund" is created in the state treasury. The fund consists of money appropriated by the legislature, federal money granted to the state for the purposes of the fund, income from investment of the fund and money otherwise accruing to the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The department shall administer the fund to provide:

(1) retention differential disbursements for law enforcement officers meeting certain levels of tenure; and

(2) support for disbursement administration processes and reporting compliance.

B. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of public safety.

C. Contingent on the completion of reporting requirements provided in Subsection G of this section, the department shall determine and distribute annually the amount necessary to provide to a law enforcement agency for the purpose of providing a retention differential disbursement to law enforcement officers employed by that law enforcement agency. A law enforcement agency shall expend funding received for no other purpose than that permitted by this section, and any unexpended balance received by a law enforcement agency pursuant to this section at the end of a fiscal year shall revert to the law enforcement retention fund. The department shall monitor

the use of funding and ensure the proper reversions to the law enforcement retention fund.

D. A law enforcement officer shall receive a retention differential disbursement in the amount of five percent of the law enforcement officer's salary upon reaching four, nine, fourteen and nineteen years of service from the anniversary of the law enforcement officer's date of hire with that law enforcement agency; provided that:

(1) the law enforcement officer remains employed as a law enforcement officer with that same law enforcement agency for one additional year; and

(2) the retention differential disbursement shall be calculated based on the salary of the law enforcement officer on those dates.

E. After the calculations for retention differential disbursements are made in accordance with Subsection D of this section, if the balance in the fund is insufficient to permit the total disbursements provided by Subsection D of this section, the department shall reduce that allocation to the maximum amount permitted by available money in the fund.

F. The amount provided for a retention differential disbursement shall include the amount of employer tax liabilities, which shall be paid by the employer at the time the retention differential disbursement is provided to the law enforcement officer.

G. To receive funding pursuant to Subsection C of this section, a law enforcement agency shall make that request to the department prior to June 1 of each fiscal year, and in that request, the agency shall report the following:

(1) the number of officers that are projected to become eligible for a retention differential disbursement in the upcoming fiscal year and the projected amount of the retention differential disbursement, including any employer tax liabilities;

(2) the number of law enforcement officers employed by the law enforcement agency for the last five years;

(3) the number of years of service of each law enforcement officer employed by the law enforcement agency;

(4) the number of law enforcement officers that left the employ of the law enforcement agency in the last year and the stated reasons why each law enforcement officer left the employ of the law enforcement agency;

(5) the number of years of service of each law enforcement officer that left the employ of the law enforcement agency in the last year;

(6) the number of applicants to the law enforcement agency in the last year;

(7) the number of applicants to the law enforcement agency in the last year that attended a law enforcement academy;

(8) the number of law enforcement officers that received one or more certifications in the last year;

(9) the number of law enforcement officers added to the law enforcement agency via lateral transfer and the years of service of each law enforcement officer at each previous law enforcement agency;

(10) any changes to compensation, recruiting, retention or benefits implemented by the law enforcement agency in the last year; and

(11) any other information that is used for determining retention rates unless disclosure of such information is otherwise prohibited by law.

H. The department shall:

(1) provide forms, standards and procedures and related training to law enforcement agencies as necessary for the agencies to report retention information;

(2) maintain the privacy and security of information in accordance with applicable state and federal laws; and

(3) adopt and promulgate rules as necessary to implement the provisions of this section.

I. The annual report and other statistical data reports generated by the department shall include an evaluation of a program's efficacy in law enforcement retention and shall be made available to law enforcement agencies and the public.

J. The department shall provide monthly reports to the department of finance and administration and the legislative finance committee about expenditures from the law enforcement retention fund, including an itemized list of expenditures and the balance remaining in the fund.

K. The department may waive reporting information required by a law enforcement agency pursuant to Subsection G of this section; provided that the department shall provide an explanation of its decision in writing.

L. The department shall submit an annual report providing information collected pursuant to Subsection G of this section to the governor and the legislature no later than December 15 of each year.

M. As used in this section:

(1) "law enforcement agency" means an agency of the state or local political subdivision of the state that employs certified law enforcement officers or the police department of a tribe that has entered into an agreement with the department pursuant to Section 29-1-11 NMSA 1978;

(2) "law enforcement officer" means a full- time salaried public employee of a law enforcement agency, or a certified part-time salaried police officer employed by a law enforcement agency, whose principal duties under law are to hold in custody any person accused of a criminal offense, to maintain public order or to make arrests for crimes; and

(3) "retention differential disbursement" means the amount disbursed from the law enforcement retention fund based on a law enforcement officer's service at a law enforcement agency but is not considered salary for the purpose of calculating retirement benefits.

History: Laws 2022, ch. 56, § 36.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 56, § 53 made Laws 2022, ch. 56, § 36 effective May 18, 2022.

ARTICLE 20
Youth Authority (Repealed.)

9-20-1 to 9-20-18. Repealed.

ANNOTATIONS

Repeals. — Laws 1992, ch. 57, § 56 repealed 9-20-1 to 9-20-18 NMSA 1978, as enacted by Laws 1988, ch. 101, §§ 1-16 and Laws 1990, ch. 32, §§ 1-2, relating to the Youth Authority, effective July 1, 1992. For provisions of former sections, *see* the 1991 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 9-2A-1 NMSA 1978 et seq.

ARTICLE 21
Indian Affairs Department

9-21-1. Short title.

Sections 1 through 15 [9-21-1 to 9-21-15 NMSA 1978] of this act may be cited as the "Indian Affairs Department Act".

History: Laws 2004, ch. 18, § 1 and Laws 2004, ch. 24, § 1.

ANNOTATIONS

Duplicate laws. — Laws 2004, ch. 18, § 1 and Laws 2004, ch. 24, § 1 enacted identical new sections, effective May 19, 2004. Both were compiled as 9-21-1 NMSA 1978.

9-21-2. Purpose.

The purpose of the Indian Affairs Department Act is to create a single, unified department to administer all laws and exercise all functions formerly administered and executed by the New Mexico office of Indian affairs.

History: Laws 2004, ch. 18, § 2 and Laws 2004, ch. 24, § 2.

ANNOTATIONS

Compiler's notes. — Laws 2004, ch. 18, § 2 and Laws 2004, ch. 24, § 2 enacted identical new sections of law, effective May 19, 2004. Both were compiled as 9-21-2 NMSA 1978.

9-21-3. Definitions.

As used in the Indian Affairs Department Act:

A. "department" means the Indian affairs department; and

B. "secretary" means the secretary of Indian affairs.

History: Laws 2004, ch. 18, § 3 and Laws 2004, ch. 24, § 3.

ANNOTATIONS

Compiler's notes. — Laws 2004, ch. 18, § 3 and Laws 2004, ch. 24, § 3 enacted identical new sections of law, effective May 19, 2004. Both were compiled as 9-21-3 NMSA 1978.

9-21-4. Department created.

The "Indian affairs department" is created in the executive branch. The department is a cabinet department and includes the following divisions:

A. the administrative services division; and

B. the program services division.

History: Laws 2004, ch. 18, § 4 and Laws 2004, ch. 24, § 4.

ANNOTATIONS

Compiler's notes. — Laws 2004, ch. 18, § 4 and Laws 2004, ch. 24, § 4 enacted identical new sections of law, effective May 19, 2004. Both were compiled as 9-21-4 NMSA 1978.

Laws 2004, ch 18, § 17 and Laws 2004, ch. 24, § 17 provided for the transfer of functions, personnel, appropriations, money, records, equipment, supplies, other property, contractual obligations and statutory references of the New Mexico office of Indian affairs to the Indian affairs department pursuant to executive order issued in accordance with Laws 2003, Chapter 403.

9-21-5. Secretary of Indian affairs.

A. The chief executive and administrative officer of the department is the "secretary of Indian affairs". The secretary shall be appointed by the governor with the consent of the senate. The secretary shall hold the 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 the secretary's appointment.

History: Laws 2004, ch. 18, § 5 and Laws 2004, ch. 24, § 5.

ANNOTATIONS

Temporary provisions. — Laws 2019, ch. 106, § 1, effective March 28, 2019, provided:

A. The "missing and murdered indigenous women task force" is created and shall exist until the end of fiscal year 2021.

B. The task force consists of:

(1) the secretary of Indian affairs or the secretary's designee from the Indian affairs department, who shall be chair of the task force;

(2) the secretary of public safety or the secretary's designee from the department of public safety;

(3) a representative of the United State bureau of Indian affairs office of justice services designated by the southwest region's deputy regional director for Indian services of the bureau of Indian affairs;

(4) one person who is a member of a pueblo, appointed by the governor;

(5) one person who is a member of the Jicarilla Apache Nation, appointed by the governor;

(6) one person who is a member of the Mescalero Apache Tribe, appointed by the governor;

(7) one person who is a member of the Navajo Nation, appointed by the governor;

(8) one person from the office of the medical investigator;

(9) one person who is a representative of an indigenous women's nongovernmental organization that provides counseling services for indigenous women and girls who have been victims of violence, appointed by the governor;

(10) one person who is a representative of a statewide or local nongovernmental organization that provides legal services to indigenous women and girls who have been victims of violence, appointed by the governor; and

(11) one person who is an indigenous woman who has been a victim of violence or a family member of an indigenous woman who has been a victim of violence, appointed by the governor.

C. Vacancies by members of the task force appointed by the governor shall be filled by appointment by the governor.

D. Task force members appointed by the governor may receive per diem and mileage as provided for non-salaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

E. The task force shall conduct a study to determine how to increase state resources for reporting and identifying missing and murdered indigenous women in the state. The task force shall collaborate with tribal law enforcement agencies to determine the scope of the problem, identify barriers to address the problem and create partnerships to improve the reporting of and the investigation of missing and murdered indigenous women.

F. The task force shall work with tribal governments and shall respect tribal sovereignty. The task force shall collaborate with the United States department of justice to improve its processes for information sharing and coordination of resources in regard to reporting and investigating cases of missing and murdered indigenous women in the state.

G. The task force shall report its findings and recommendations to the governor, the legislative council service library and the appropriate interim legislative committee and

present those findings to the appropriate interim legislative committee prior to November 1, 2020.

9-21-6. Secretary; duties and general powers.

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

B. To perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or any division of the department, except where authority conferred upon any division in the department 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 Indian Affairs Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and rules;

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

(3) organize the department into those organizational units 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 the secretary's duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to ensure implementation of and compliance with the provisions of law with the administration or execution of which the secretary 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; and

(10) appoint, with the governor's consent, for each division, a "director". These appointed positions are exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978]. Persons appointed to these positions shall serve at the pleasure of the secretary.

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

D. 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 procedural rules as may be necessary to carry out the duties of the department and its divisions. A rule promulgated by the director of a division in carrying out the functions and duties of the division shall not be effective until approved by the secretary. Unless otherwise provided by statute, a rule affecting a person or agency outside the department shall not be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, 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 rule, proposed amendment or repeal of an existing rule 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 shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: Laws 2004, ch. 18, § 6 and Laws 2004, ch. 24, § 6.

ANNOTATIONS

Compiler's notes. — Laws 2004, ch. 18, § 6 and Laws 2004, ch. 24, § 6 enacted identical new sections of law, effective May 19, 2004. Both were compiled as 9-21-6 NMSA 1978.

Cross references. — For rule making authority for Navajo Nation capital projects, *see* 6-28-8 NMSA 1978.

9-21-7. Department; additional powers and duties.

A. The department is the coordinating agency for intergovernmental and interagency programs concerning tribal governments and the state.

B. The department shall:

(1) investigate, study, consider and act upon the entire subject of Indian conditions and relations within New Mexico, including problems of health, economy and education and the effect of local, state and federal legislative, executive and judicial actions. The department shall collaborate with other state departments or agencies that have an interest or stake in the subject being investigated, studied or considered. In performing its functions, the department shall provide an opportunity for the presentation and exchange of ideas in respect to Indian affairs of the state by all interested persons; and

(2) assist in setting the policy, and act as the clearinghouse, for all state programs affecting the Indian people of New Mexico.

C. The department may:

(1) hold hearings, conduct meetings, make investigations and confer with officials of local, state and federal agencies to secure cooperation between the local, state, federal and Indian tribal governments in the promotion of the welfare of the Indian people of New Mexico;

(2) contract with tribal governments, public agencies or private persons to provide services and facilities for promoting the welfare of the Indian people of New Mexico; and

(3) solicit and accept gifts, grants, donations, bequests and devises.

History: Laws 2004, ch. 18, § 7 and Laws 2004, ch. 24, § 7.

ANNOTATIONS

Compiler's notes. — Laws 2004, ch. 18, § 7 and Laws 2004, ch. 24, § 7, both effective May 19, 2004, enacted new sections of law. Both acts were compiled as 9-21-7 NMSA 1978. The acts were identical except for the second sentence in Paragraph B(1) of

Laws 2004, ch. 18, § 7, which provides, "The department shall collaborate with other state departments or agencies that have an interest or stake in the subject being investigated, studied or considered." This section is set out as enacted by Laws 2004, ch. 24, § 7, and incorporates both acts. *See* 12-1-8 NMSA 1978. To view the session laws in their entirety, *see* the 2004 session laws on *NMOneSource.com*.

9-21-8. Organizational units of the department; powers and duties specified by law; access to information.

A. Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, who shall retain the final decision-making authority and responsibility for the administration of any such laws.

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

History: Laws 2004, ch. 18, § 8 and Laws 2004, ch. 24, § 8.

ANNOTATIONS

Compiler's notes. — Laws 2004, ch. 18, § 8 and Laws 2004, ch. 24, § 8 enacted identical new sections of law, effective May 19, 2004. Both were compiled as 9-21-8 NMSA 1978. *See* 12-1-8 NMSA 1978.

9-21-9. Division directors.

Except as otherwise provided by law, the secretary shall appoint, with the approval of the governor, "directors" of divisions established within the department. The directors so appointed are exempt from the Personnel Act [Chapter 10, Article 9 NMSA 1978].

History: Laws 2004, ch. 18, § 9 and Laws 2004, ch. 24, § 9.

ANNOTATIONS

Compiler's notes. — Laws 2004, ch. 18, § 9 and Laws 2004, ch. 24, § 9 enacted identical new sections of law, effective May 19, 2004. Both were compiled as 9-21-9 NMSA 1978. *See* 12-1-8 NMSA 1978.

9-21-10. Bureau chiefs.

The secretary may establish within each division such "bureaus" as the secretary deems necessary to carry out the provisions of the Indian Affairs Department Act. The secretary shall appoint a "chief" to be the administrative head of a bureau. A chief and

all subsidiary employees of the department are covered by the Personnel Act [Chapter 10, Article 9 NMSA 1978] unless otherwise provided by law.

History: Laws 2004, ch. 18, § 10 and Laws 2004, ch. 24, § 10.

ANNOTATIONS

Compiler's notes. — Laws 2004, ch. 18, § 10 and Laws 2004, ch. 24, § 10 enacted identical new sections of law, effective May 19, 2004. Both were compiled as 9-21-10 NMSA 1978. *See* 12-1-8 NMSA 1978.

9-21-11. Administrative services division; duties.

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

A. keeping all official records of the department;

B. providing clerical services in the areas of personnel and budget preparation; and

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

History: Laws 2004, ch. 18, § 11 and Laws 2004, ch. 24, § 11.

ANNOTATIONS

Compiler's notes. — Laws 2004, ch. 18, § 11 and Laws 2004, ch. 24, § 11 enacted identical new sections of law, effective May 19, 2004. Both were compiled as 9-21-11 NMSA 1978. *See* 12-1-8 NMSA 1978.

9-21-12. Program services division; duties.

The program services division shall provide program implementation and support for field programs and services.

History: Laws 2004, ch. 18, § 12 and Laws 2004, ch. 24, § 12.

ANNOTATIONS

Compiler's notes. — Laws 2004, ch. 18, § 12 and Laws 2004, ch. 24, § 12 enacted identical new sections of law, effective May 19, 2004. Both were compiled as 9-21-12 NMSA 1978. *See* 12-1-8 NMSA 1978.

9-21-13. Indian affairs commission created.

A. The "Indian affairs commission" is created. The commission shall consist of ten members who are residents of New Mexico appointed by the governor as follows:

(1) three members shall be Pueblo Indians;

(2) three members shall be Navajo Indians;

(3) two members shall be Apache Indians;

(4) one member shall be an urban Indian; and

(5) one member shall be a non-Indian.

B. Indian members, except the urban Indian member, shall be appointed from lists of names submitted by the all Indian pueblo council, the Jicarilla and Mescalero tribal councils and the Navajo Nation.

C. Members serve at the pleasure of the governor. Vacancies shall be filled by appointment by the governor for the unexpired term.

D. The governor shall appoint the chairman and the commission may select such other officers as the commission deems necessary.

E. Members may receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

History: Laws 2004, ch. 18, § 13 and Laws 2004, ch. 24, § 13.

ANNOTATIONS

Compiler's notes. — Laws 2004, ch. 18, § 13 and Laws 2004, ch. 24, § 13 enacted identical new sections of law, effective May 19, 2004. Both were compiled as 9-21-13 NMSA 1978. *See* 12-1-8 NMSA 1978.

9-21-14. Powers of the commission.

The commission shall:

A. conduct meetings to provide an opportunity for the presentation and exchange of ideas with respect to Indian affairs by any interested party that result in the promotion of the welfare of the Indian people;

B. receive and disseminate information on issues that significantly impact the welfare of the Indian people;

C. apprise the secretary of the conditions in Native American communities in New Mexico; and

D. advise the secretary on policy matters related to the department's powers and duties.

History: Laws 2004, ch. 18, § 14 and Laws 2004, ch. 24, § 14.

ANNOTATIONS

Temporary provisions. — Laws 2019, ch. 106, § 1, effective March 28, 2019, provided:

A. The "missing and murdered indigenous women task force" is created and shall exist until the end of fiscal year 2021.

B. The task force consists of:

(1) the secretary of Indian affairs or the secretary's designee from the Indian affairs department, who shall be chair of the task force;

(2) the secretary of public safety or the secretary's designee from the department of public safety;

(3) a representative of the United State bureau of Indian affairs office of justice services designated by the southwest region's deputy regional director for Indian services of the bureau of Indian affairs;

(4) one person who is a member of a pueblo, appointed by the governor;

(5) one person who is a member of the Jicarilla Apache Nation, appointed by the governor;

(6) one person who is a member of the Mescalero Apache Tribe, appointed by the governor;

(7) one person who is a member of the Navajo Nation, appointed by the governor;

(8) one person from the office of the medical investigator;

(9) one person who is a representative of an indigenous women's nongovernmental organization that provides counseling services for indigenous women and girls who have been victims of violence, appointed by the governor;

(10) one person who is a representative of a statewide or local nongovernmental organization that provides legal services to indigenous women and girls who have been victims of violence, appointed by the governor; and

(11) one person who is an indigenous woman who has been a victim of violence or a family member of an indigenous woman who has been a victim of violence, appointed by the governor.

C. Vacancies by members of the task force appointed by the governor shall be filled by appointment by the governor.

D. Task force members appointed by the governor may receive per diem and mileage as provided for non-salaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

E. The task force shall conduct a study to determine how to increase state resources for reporting and identifying missing and murdered indigenous women in the state. The task force shall collaborate with tribal law enforcement agencies to determine the scope of the problem, identify barriers to address the problem and create partnerships to improve the reporting of and the investigation of missing and murdered indigenous women.

F. The task force shall work with tribal governments and shall respect tribal sovereignty. The task force shall collaborate with the United States department of justice to improve its processes for information sharing and coordination of resources in regard to reporting and investigating cases of missing and murdered indigenous women in the state.

G. The task force shall report its findings and recommendations to the governor, the legislative council service library and the appropriate interim legislative committee and present those findings to the appropriate interim legislative committee prior to November 1, 2020.

9-21-15. Preservation of Indian legends.

The department may employ not more than two persons for each Indian tribe or pueblo in the state to record the legends of the tribe or pueblo in the English language for the purpose of making them available for dissemination to the public. Persons employed to record the legends shall be members of the tribe or pueblo, shall have knowledge of both English and the language spoken by the particular tribe or pueblo and shall be familiar with a means of recording the legends in the English language. The department may employ personnel and purchase recording equipment necessary to fulfill the purpose of this section.

History: Laws 2004, ch. 18, § 15 and Laws 2004, ch. 24, § 15 .

ANNOTATIONS

Compiler's notes. — Laws 2004, ch. 18, § 15 and Laws 2004, ch. 24, § 15 enacted identical new sections of law, effective May 19, 2004. Both have been compiled as 9-21-15 NMSA 1978. *See* 12-1-8 NMSA 1978.

9-21-16. New Mexico office of Indian affairs; successor agency [Indian affairs department]; duty.

The New Mexico office of Indian affairs, or a successor agency [Indian affairs department], shall appoint the secretary or the secretary's designee to serve as a member of the interagency behavioral health purchasing collaborative and shall ensure that all behavioral health services, including mental health and substance abuse services funded, provided, contracted for or approved by the commission, are in compliance with the requirements of Section 9-7-6.4 NMSA l978.

History: Laws 2004, ch. 46, § 16.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 24, § 17 provided that statutory references to the New Mexico office of Indian affairs be changed to the Indian affairs department pursuant to an executive order issued in accordance with Laws 2003, Chapter 403.

Effective dates. — Laws 2004, ch. 46 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-21-17. Recompiled.

History: Laws 2005, ch. 146, § 1; recompiled by Laws 2008, ch. 81, § 4.

ANNOTATIONS

Recompilations. — Laws 2008, ch. 81, § 4 recompiled former 9-21-17 NMSA 1978 as 6-29-1 NMSA 1978, effective May 14, 2008.

9-21-18. Recompiled.

History: Laws 2005, ch. 146, § 2; recompiled by Laws 2008, ch. 81, § 4.

ANNOTATIONS

Recompilations. — Laws 2008, ch. 81, § 4 recompiled former 9-21-18 NMSA 1978 as 6-29-2 NMSA 1978, effective May 14, 2008.

9-21-19. Recompiled.

History: Laws 2005, ch. 146, § 3; recompiled by Laws 2008, ch. 81, § 4.

ANNOTATIONS

Recompilations. — Laws 2008, ch. 81, § 4 recompiled former 9-21-19 NMSA 1978 as 6-29-3 NMSA 1978, effective May 14, 2008.

9-21-20. Recompiled.

History: Laws 2005, ch. 146, § 4; recompiled by Laws 2008, ch. 81, § 4.

ANNOTATIONS

Recompilations. — Laws 2008, ch. 81, § 4 recompiled former 9-21-20 NMSA 1978 as 6-29-4 NMSA 1978, effective May 14, 2008.

9-21-21. Recompiled.

History: Laws 2005, ch. 146, § 5; recompiled by Laws 2008, ch. 81, § 4.

ANNOTATIONS

Recompilations. — Laws 2008, ch. 81, § 4 recompiled former 9-21-21 NMSA 1978 as 6-29-5 NMSA 1978, effective May 14, 2008.

9-21-22. Recompiled.

History: Laws 2005, ch. 146, § 6; recompiled by Laws 2008, ch. 81, § 4.

ANNOTATIONS

Recompilations. — Laws 2008, ch. 81, § 4 recompiled former 9-21-22 NMSA 1978 as 6-29-6 NMSA 1978, effective May 14, 2008.

9-21-23. Recompiled.

History: Laws 2005, ch. 146, § 7; recompiled by Laws 2008, ch. 81, § 4.

ANNOTATIONS

Recompilations. — Laws 2008, ch. 81, § 4 recompiled former 9-21-23 NMSA 1978 as 6-29-7 NMSA 1978, effective May 14, 2008.

9-21-24. Recompiled.

History: Laws 2005, ch. 146, § 8; 2007, ch. 124, § 1; recompiled by Laws 2008, ch. 81, § 4.

ANNOTATIONS

Recompilations. — Laws 2008, ch. 81, § 4 recompiled former 9-21-24 NMSA 1978 as 6-29-8 NMSA 1978, effective May 14, 2008.

ARTICLE 22
Veterans' Services Department

9-22-1. Short title.

Chapter 9, Article 22 NMSA 1978 may be cited as the "Veterans' Services Department Act".

History: Laws 2004, ch. 19, § 1; 2011, ch. 40, § 1.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, changed the statutory reference to the act.

9-22-2. Purpose.

The purpose of the Veterans' Services Department Act is to create a unified department to administer the laws and exercise the functions formerly administered and exercised by the New Mexico veterans' service commission.

History: Laws 2004, ch. 19, § 2.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 19 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-22-3. Definitions.

As used in the Veterans' Services Department Act:

A. "department" means the veterans' services department;

B. "gold star parent" means a surviving parent of a member of the armed forces of the United States who is missing in action or whose death was related to the member's service in the armed forces of the United States;

C. "secretary" means the secretary of veterans' services; and

D. "veteran" means a New Mexico resident who:

(1) was regularly enlisted, drafted, inducted or commissioned in the:

(a) armed forces of the United States and was accepted for and assigned to active duty in the armed forces of the United States;

(b) army reserve, navy reserve, marine corps reserve, air force reserve, coast guard reserve, army national guard or air national guard and was accepted for and assigned to duty for a minimum of six continuous years; or

(c) United States public health service commissioned corps or the national oceanic and atmospheric administration commissioned officer corps and served in the capacity of a commissioned officer while on active duty in defense of the United States; and

(2) was not separated from such service under circumstances amounting to dishonorable discharge.

History: Laws 2004, ch. 19, § 3; 2012, ch. 6, § 1; 2016, ch. 4, § 1; 2017, ch. 84, § 1.

ANNOTATIONS

The 2017 amendment, effective July 1, 2017, defined "gold star parent" as the term is used in the Veterans' Services Department Act; and added a new Subsection B and redesignated the succeeding subsections accordingly.

The 2016 amendment, effective May 18, 2016, amended the definition of "veteran" in the Veterans' Services Department Act, removing the requirement that a veteran be a citizen of the United States; in Subsection C, deleted Paragraph (1), which defined "veteran" as a New Mexico resident who is a citizen of the United States, and redesignated the succeeding paragraphs accordingly.

The 2012 amendment, effective July 1, 2012, in Subsection C, Paragraph (2), added Subparagraphs (b) and (c).

9-22-4. Department established.

The "veterans' services department" is created in the executive branch. The department is a cabinet department and includes the following divisions:

A. the administrative services division;

B. the field services division;

C. the health care coordination division; and

D. the state benefits division.

History: Laws 2004, ch. 19, § 4; 2017, ch. 84, § 2.

ANNOTATIONS

The 2017 amendment, effective July 1, 2017, created a new health care coordination division of the veterans’ services department, and removed the state approving division as a division of the veterans’ services department; and in Subsection C, after "the", deleted "state approving" and added "health care coordination".

Compiler’s notes. — Laws 2004, ch. 19, § 30, effective May 19, 2004, provided for the transfer of functions, personnel, appropriations, money, records, equipment, supplies, other property and contractual obligations of the veterans' service commission to the veterans' services department pursuant to executive order issued in accordance with Laws 2003, Chapter 403 and to provide that all statutory references to the veterans' service commission shall be deemed to be references to the veterans' services department.

9-22-5. Secretary of veterans' services; appointment.

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

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

History: Laws 2004, ch. 19, § 5.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 19 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-22-6. Secretary; duties and general powers.

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

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

(1) except as otherwise provided in the Veterans' Services Department Act, exercise general supervisory and appointing authority over all department employees, subject to applicable personnel laws and rules;

(2) delegate authority to subordinates as the secretary deems necessary and appropriate, clearly delineating the delegated authority and its limitations;

(3) organize the department into organizational units that the secretary deems will enable it to function most efficiently, subject to 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 the persons necessary to discharge the duties of the secretary;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to ensure implementation of and compliance with the provisions of law with the administration or execution of which the secretary is responsible and to enforce the 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 the administration;

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies, 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; and

(10) except as otherwise provided by law, with the approval of the governor, appoint a "director" for each division established within the department.

C. The secretary may apply for and receive, in the name of the department and with the approval of the governor, public or private funds, including 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 reasonable rules necessary to carry out the duties of the department and its divisions. A rule promulgated by the director of a division in carrying out the functions and duties of the division shall not be effective until approved by the secretary. Unless otherwise provided by statute, a rule affecting a person or agency outside the department shall not 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 rule, the action proposed to be taken, the time and place of the hearing, the manner in which an interested person may present a view and the method by which copies of the proposed rule, amendment or repeal of an existing rule 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 before the hearing date to a person who has submitted a written request for advance notice of hearing. A rule shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: Laws 2004, ch. 19, § 6.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 19 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-22-7. Department responsibilities.

The department is responsible for:

A. assisting veterans and their surviving spouses, children and gold star parents in the preparation, presentation and prosecution of claims against the United States arising by reason of military or naval service;

B. assisting veterans and their surviving spouses, children and gold star parents in establishing the rights and the procurement of benefits that have accrued or may accrue to them pursuant to state law;

C. disseminating information regarding laws beneficial to veterans and their surviving spouses, children and gold star parents; and

D. cooperating with agencies of the United States that are or may be established for the beneficial interest of veterans, to which end the department may enter into agreements or contracts with the United States for the purpose of protecting or procuring rights or benefits for veterans.

History: Laws 2004, ch. 19, § 7; 2017, ch. 84, § 3.

ANNOTATIONS

The 2017 amendment, effective July 1, 2017, provided that the veterans' services department is responsible for assisting gold star parents in the preparation, presentation and prosecution of claims against the United States arising by reason of military or naval service, in establishing the rights and the procurement of benefits that have accrued or may accrue to them pursuant to state law, and for disseminating information regarding laws beneficial to gold star parents; in Subsections A, B and C, after "surviving spouses", deleted "and their", and after "children", added "and gold star parents"; in Subsection B, after "assisting veterans", added "and"; and in Subsection C, after "beneficial to veterans", added "and".

9-22-8. Organizational units of department; powers and duties specified by law; access to information.

The powers and duties of the officers of the organizational units of the department shall be subject to the direction and supervision of the secretary, and the secretary shall retain final decision-making authority and responsibility in accordance with Section 6 [9-22-6 NMSA 1978] of the Veterans' Services 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.

History: Laws 2004, ch. 19, § 8.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 19 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-22-9. Divisions; directors.

The secretary may appoint, with the approval of the governor, "directors" of the divisions that are established within the department. Directors are exempt from the Personnel Act [Chapter 10, Article 9 NMSA 1978].

History: Laws 2004, ch. 19, § 9.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 19 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-22-10. Bureaus; chiefs.

The secretary may establish, within each division, such "bureaus" that the secretary deems necessary to carry out the provisions of the Veterans' Services Department Act. The secretary shall appoint a "chief" to be the administrative head of a bureau. All chiefs and subsidiary employees of the department shall be covered by the Personnel Act [Chapter 10, Article 9 NMSA 1978], unless otherwise provided by law.

History: Laws 2004, ch. 19, § 10.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 19 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-22-11. 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;

(3) providing clerical, recordkeeping and administrative support to agencies administratively attached to the department at their request;

(4) coordinating short- and long-term planning of the department; and

(5) administering programs and grants that have been assigned to the department by the secretary or governor or by statute, including management of the state approving bureau.

B. The administrative services division shall provide fiduciary services, including acting as either court-appointed conservator or representative payee for veterans adjudicated as unable to handle their own financial affairs without assistance. The division shall manage fiduciary funds and safeguard the assets for veterans and their dependents.

History: Laws 2004, ch. 19, § 11; 2017, ch. 84, § 4.

ANNOTATIONS

The 2017 amendment, effective July 1, 2017, provided that the administrative services division's duty to administer programs and grants that have been assigned to the veterans' services department by the secretary of veterans' services or the governor includes the management of the state approving bureau; in Subsection A, Paragraph A(5), after "governor or by statute", added "including management of the state approving bureau".

9-22-12. Field services division; powers and duties.

The field services division shall assist veterans and their families with claims for federal veterans' administration compensation, pensions, education, medical care and death benefits. The field services division shall operate field offices throughout the state to provide services and disseminate information regarding all federal and state laws beneficial to veterans and their families.

History: Laws 2004, ch. 19, § 12.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 19 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-22-12.1. Health care coordination division.

The health care coordination division shall:

A. develop and coordinate veterans programs and outreach, including transitional living, housing and health care programs; and

B. advise and coordinate with the secretary regarding all health care-related issues for veterans and veterans' families.

History: Laws 2017, ch. 84, § 7; 2019, ch. 146, § 1.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, removed the duty of providing oversight of the New Mexico state veterans' home from the health coordination division; and deleted Subsection B and redesignated former Subsection C as Subsection B.

9-22-13. State approving bureau.

A. The state approving bureau is created within the administrative services division of the department and is the state approving agency for the purposes of 38 USCA Section 3671.

B. The state approving bureau shall evaluate and approve educational programs and training programs for all persons and veterans eligible for educational assistance pursuant to the provisions of Title 38 of the United States Code. Approval of courses, educational programs and training programs, including training on the job, by the state approving bureau shall be in accordance with the provisions of Title 38 of the United States Code.

History: Laws 2004, ch. 19, § 13; 2017, ch. 84, § 5.

ANNOTATIONS

The 2017 amendment, effective July 1, 2017, changed the state approving division to the state approving bureau within the administrative services division of the veterans' services department; deleted "division" and added "bureau" throughout the section; in the catchline, deleted "division" and added "bureau"; and in Subsection A, added "created within the administrative services division of the department and is".

9-22-14. State benefits division.

The state benefits division shall:

A. provide oversight of veterans' service organizations;

B. develop or coordinate veterans' programs and outreach, including economic development; and

C. determine eligibility for, conduct or oversee state-funded veterans' services and benefits, including determining eligibility for veteran property tax exemptions, hunting and fishing licensing and motor vehicle license plate programs; managing the Vietnam and children of deceased veterans scholarship programs; and overseeing the military honors burial program and state veterans' cemeteries, monuments and museums.

History: Laws 2004, ch. 19, § 14; 2017, ch. 84, § 6.

ANNOTATIONS

The 2017 amendment, effective July 1, 2017, removed certain programs from the list of veterans' programs that are coordinated by the state benefits division under this section, and made technical changes; in Subsection B, after "including", deleted "transitional living, housing, healthcare and"; and in Subsection C, after "overseeing the", deleted "state funeral" and added "military", and after "honors", deleted "and".

9-22-14.1. Veterans' enterprise fund; purpose; administration.

The "veterans' enterprise fund" is created in the state treasury. The fund consists of appropriations, gifts, grants, donations, bequests, proceeds from the sale of publications produced by the department, fees collected by the department and public or private funds applied for and received by the department to carry out its programs, duties or services. Interest earned on money in the fund shall be credited to the fund. Money in the fund at the end of a fiscal year shall not revert to the general fund or any other fund. The department shall administer the fund, and money in the fund is appropriated to the department to carry out its programs, duties or services. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of veterans' services or the secretary's authorized representative.

History: Laws 2011, ch. 40, § 2.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 40, § 3 made Laws 2011, ch. 40, § 2 effective July 1, 2011.

9-22-15. Repealed.

History: Laws 2004, ch. 19, § 15; repealed by Laws 2017, ch. 84, § 10.

ANNOTATIONS

Repeals. — Laws 2017, ch. 84, § 10 repealed 9-22-15 NMSA 1978, as enacted by Laws 2004, ch. 19, § 15, relating to the veterans' services advisory board, effective July

1, 2017. For provisions of former section, *see* the 2016 NMSA 1978 on *NMOneSource.com*.

9-22-16. Power to act as a personal representative or conservator.

A. The department may act as a:

(1) personal representative of a deceased veteran;

(2) conservator of the estate of a minor child of a veteran;

(3) conservator of the estate of an incompetent veteran; or

(4) conservator of the estate of a person who is a bona fide resident of New Mexico and who is certified by the United States veterans' administration as having money due from the veterans' administration, the payment of which is dependent upon the appointment of a conservator for the person.

B. A fee shall not be allowed or paid to the department for acting as a personal representative or conservator.

C. When the department is appointed as a personal representative in the last will of a veteran, the court or officer authorized to grant testamentary letters in the state shall, upon the proper application, grant testamentary letters to the department. When application is made to a court or officer having authority to grant letters of administration with the will annexed upon the estate of a veteran or upon the estate of a deceased veteran who may have died intestate, and there is no person entitled to the letters who is qualified, competent, willing or able to accept such administration, the court or officer may, at the request of a party interested in the estate, grant letters of administration to the department. A court or officer having authority to grant letters of guardianship of an infant may, upon the same application as is required by law for the appointment of a guardian of such an infant, appoint the department as conservator of the estate of an infant who is the child of a veteran. A court having jurisdiction to appoint a conservator of the estate of an incompetent may appoint the department to be such conservator when the incompetent is a veteran. A court having jurisdiction over a person who is a resident of New Mexico, and who is certified by the United States veterans' administration as having money due from the veterans' administration, the payment of which is dependent upon the appointment of a conservator for the person, may appoint the department to be the conservator.

D. The court or officer may make orders respecting the department as the personal representative or conservator and may require the department to render all accounts that the court or officer might lawfully require if the personal representative or conservator were a natural person.

History: Laws 2004, ch. 19, § 16.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 19 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-22-17. Court proceedings for appointment as personal representative or conservator.

The department may institute a proceeding in a court of competent jurisdiction for appointment as personal representative of the estate of a deceased veteran or as conservator of the estate of a minor child of a veteran or as conservator of the estate of an incompetent veteran without cost and tax.

History: Laws 2004, ch. 19, § 17.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 19 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-22-18. Action as a personal representative or conservator; bond.

The department shall post with the secretary of state a corporate surety bond in the amount of five hundred thousand dollars ($500,000). The bond shall be conditioned upon the faithful discharge of the duties of the department as personal representative or conservator and shall inure to the use and benefit of each person or estate for whom the department is appointed to act. In a case or proceeding in which the department is appointed as a personal representative of the estate of a veteran or as a conservator of the estate of an incompetent veteran or as a conservator of the estate of a minor child of a veteran, the department shall act without additional bond and the court or official having jurisdiction shall so order in its order of appointment.

History: Laws 2004, ch. 19, § 18.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 19 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-22-19. Bond premium cost proration.

In each case where the department is appointed to serve as a personal representative or conservator of the estate of a beneficiary of the United States veterans' administration, the court in which the estate is filed shall authorize a charge for each estate's share of the bond premium to be paid from the assets of the estate. The department shall determine the charge to be made against each estate, and the aggregate amount of all charges shall not exceed the bond premium. It is the intent of the legislature that this charge shall be the share of each estate in the cost of the bond that the department posts as provided in Section 18 [9-22-18 NMSA 1978] of the Veterans' Services Department Act.

History: Laws 2004, ch. 19, § 19.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 19 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-22-20. Oaths and affirmations.

The secretary and the employees designated by the secretary may administer oaths and affirmations and execute attestation and certificates.

History: Laws 2004, ch. 19, § 20.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 19 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

ARTICLE 23
Aging and Long-Term Services Department

9-23-1. Short title.

Chapter 9, Article 23 NMSA 1978 may be cited as the "Aging and Long-Term Services Department Act".

History: Laws 2004, ch. 23, § 1; 2024, ch. 16, § 1.

ANNOTATIONS

The 2024 amendment, effective February 28, 2024, changed "Sections 1 through 11 of this act" to "Chapter 9, Article 23 NMSA 1978".

9-23-2. Purpose.

The purpose of the Aging and Long-Term Services Department Act is to create a single, unified department to administer all laws and exercise all functions formerly administered by the state agency on aging and to administer laws and exercise functions of the human services department [health care authority department], the department of health and the children, youth and families department that relate to aging, adults with disabilities or long-term care services.

History: Laws 2004, ch. 23, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

Effective dates. — Laws 2004, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-23-3. Definitions.

As used in the Aging and Long-Term Services Department Act:

A. "department" means the aging and long-term services department; and

B. "secretary" means the secretary of aging and long-term services.

History: Laws 2004, ch. 23, § 3.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-23-4. Department created; divisions.

A. The "aging and long-term services department" is created. The department is a cabinet department and includes the following divisions:

(1) administrative services division;

(2) consumer and elder rights division;

(3) aging network services division;

(4) long-term care division; and

(5) adult protective services division.

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

History: Laws 2004, ch. 23, § 4.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

Cross references. — For implementation of medicaid programs, *see* 27-15-1 NMSA 1978 et seq., Money Follows the Person in New Mexico Act.

9-23-5. Secretary of aging and long-term services; appointment.

A. The chief executive and administrative officer of the department is the "secretary of aging and long-term services". 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 the secretary-designate's appointment.

History: Laws 2004, ch. 23, § 5.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-23-6. Secretary; duties and general powers.

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

B. To perform the secretary’s 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 Aging and Long-Term Services Department 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 the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

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

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

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to ensure implementation of and compliance with the provisions of law for whose administration or execution the secretary 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; and

(10) appoint, with the governor's consent, for each division, a "director". These appointed positions are exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978]. Persons appointed to these positions shall serve at the pleasure of the secretary.

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

D. 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 procedural rules as may be necessary to carry out the duties of the department and its divisions. A rule promulgated by the director of any division in carrying out the functions and duties of the division shall not be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, 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 rule, proposed amendment or repeal of an existing rule 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. Rules shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: Laws 2004, ch. 23, § 6.

ANNOTATIONS

Compiler's notes. — Section 27-7A-7 NMSA 1978 required the department, by January 1, 2006, to jointly establish with the department of health rules to carry out the Employee Abuse Registry Act.

Effective dates. — Laws 2004, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-23-7. Division directors.

The secretary shall appoint, with the approval of the governor, "directors" of divisions established in the department. The directors so appointed are exempt from the Personnel Act [Chapter 10, Article 9 NMSA 1978].

History: Laws 2004, ch. 23, § 7.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-23-8. Bureaus; chiefs.

The secretary may establish in the divisions such bureaus as the secretary deems necessary to carry out the provisions of the Aging and Long-Term Services Department Act. The secretary shall employ a "chief" to be the administrative head of a bureau.

History: Laws 2004, ch. 23, § 8.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-23-9. Divisions; general duties.

In addition to the duties assigned to each division of the department by the secretary:

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 consumer and elder rights division shall administer the long-term care ombudsman program and provide health insurance and benefits counseling and legal services;

C. the aging network services division shall administer the federal Older Americans' Act programs;

D. the long-term care division shall administer home- and community-based long-term care programs; and

E. the adult protective services division shall provide adult protective services.

History: Laws 2004, ch. 23, § 9.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

Cross references. — For the Older Americans Act of 1965, *see* Pub.L. 89-73, 79 Stat. 218.

9-23-10. Office of Indian elder affairs created.

The "office of Indian elder affairs" is created within the office of the secretary. The office of Indian elder affairs shall assume the responsibilities of the Indian area agency on aging, including contract management, program compliance monitoring, technical assistance, advocacy and training to pueblo and Apache tribe Older Americans Act of 1965 programs, and to establish relationships that support the efforts of the Navajo area agency on aging, and shall participate with the other divisions of the department to review and make recommendations regarding other health and social programs of the department that serve Indian elders. Abolishment or transfer of the office of Indian elder affairs out of the department shall require approval of the legislature.

History: Laws 2004, ch. 23, § 10.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

Cross references. — For the Older Americans Act of 1965, *see* Pub.L. 89-73, 79 Stat. 218.

9-23-11. Organizational units of the department; powers and duties specified by law; access to information.

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, who shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 6 [9-23-6 NMSA 1978] of the Aging and Long-Term Services 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 2004, ch. 23, § 11.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-23-12. State agency on aging; successor agency [aging and long-term services department]; duty.

The state agency on aging, or a successor agency [aging and long-term services department], shall appoint the secretary or the secretary's designee to serve as a member of the interagency behavioral health purchasing collaborative and shall ensure that any behavioral health services, including mental health and substance abuse services funded, provided, contracted for or approved, are in compliance with the requirements of Section 9-7-6.4 NMSA 1978.

History: Laws 2004, ch. 46, § 15.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 23, § 13 provided that all statutory references to the state agency on aging shall be deemed references to the aging and long-term services department, effective May 19, 2004.

Effective dates. — Laws 2004, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-23-13. Kiki Saavedra senior dignity fund; created; purpose; appropriation.

A. The "Kiki Saavedra senior dignity fund" is created as a nonreverting fund in the state treasury and shall be administered by the aging and long-term services department. The fund consists of money that is appropriated or donated or that otherwise accrues to the fund.

B. Money in the Kiki Saavedra senior dignity fund shall be subject to legislative appropriation to address high-priority services for senior citizens in New Mexico, including transportation, food insecurity, physical and behavioral health, case management and caregiving. More particularly, the goals of the fund are increased

access for seniors and adults with disabilities, including veterans, to specialty vehicles and to specialty physical and behavioral health care not always provided in rural areas; assistance with appointments and meals in underserved areas of the state; and care coordination through community health workers.

C. Expenditures from the fund shall be made on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of aging and long-term services or the secretary's authorized representative.

History: Laws 2020, ch. 8, § 1

ANNOTATIONS

Effective dates. — Laws 2020, ch. 8 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

9-23-14. Criminal history records checks; procedures; confidentiality; violation; penalty.

A. For the purposes of this section:

(1) "employee" means a person working for the department in one of the following areas:

(a) the adult protective services division;

(b) the long-term care ombudsman program; or

(c) the consumer and elder rights division;

(2) "selected applicant" means a person who has completed the interview process, was selected as a candidate for employment and has conditionally accepted a position with the department pending a criminal history records check; and

(3) "volunteer" means a person who:

(a) performs work or who has been identified by the department to perform work in: 1) the adult protective services division; 2) the long-term care ombudsman program; or 3) the consumer and elder rights division;

(b) is not an employee; and

(c) does not receive compensation for the person's work.

B. State and national criminal history records checks shall be conducted on employees, selected applicants and volunteers.

C. As directed by the department, an employee, a selected applicant or a volunteer shall submit a set of electronic fingerprints to the department of public safety. The department of public safety shall conduct a state criminal history records check and forward the fingerprints to the federal bureau of investigation for a national criminal history records check to determine the existence and content of records of convictions and arrests in this state or other law enforcement jurisdictions and to generate a criminal history records check in accordance with rules of the department of public safety and regulations of the federal bureau of investigation.

D. The department of public safety shall review the information returned from the criminal history records checks and compile and disseminate the information to the department, which shall use the information to investigate and determine whether an employee, selected applicant or volunteer is qualified.

E. Criminal history records obtained pursuant to the provisions of this section shall:

(1) be confidential;

(2) not be a public record for purposes of the Inspection of Public Records Act [Chapter 14, Article 3 NMSA 1978];

(3) not be used for any purpose other than determining the eligibility of employees, selected applicants or volunteers; and

(4) not be released or disclosed to any other person, except pursuant to a court order or with the written consent of the person who is the subject of the records.

F. A person who releases or discloses criminal history records in violation of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

G. The department shall promulgate rules for the investigation and determination of qualifications; provided that the department shall not exclude an otherwise selected applicant, employee or volunteer on the sole basis that the person has been previously arrested or convicted of a crime, unless that person has a disqualifying criminal conviction pursuant to the Criminal Offender Employment Act [Chapter 28, Article 2 NMSA 1978].

History: Laws 2024, ch. 16, § 2.

ANNOTATIONS

Emergency clauses. — Laws 2024, ch. 16, § 4 contained an emergency clause and was approved February 28, 2024.

Applicability. — Laws 2024, ch. 16, § 3 provided that the provisions of Laws 2024, ch. 16, § 2 apply to selected applicants of employees employed by or volunteers of the aging and long-term services department on or after February 28, 2024.

ARTICLE 24
Public Education Department and Commission

9-24-1. Short title.

Chapter 9, Article 24 NMSA 1978 may be cited as the "Public Education Department Act".

History: Laws 2004, ch. 27, § 1; 2005, ch. 286, § 1.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, added the statutory reference to the act.

9-24-2. Purpose.

The purpose of the Public Education Department Act is to establish a single, unified department to administer laws and exercise functions formerly administered and exercised by the state board of education and the state department of public education.

History: Laws 2004, ch. 27, § 2.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-24-3. Definitions.

As used in the Public Education Department Act:

A. "commission" means the public education commission;

B. "department" means the public education department; and

C. "secretary" means the secretary of public education.

History: Laws 2004, ch. 27, § 3.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-24-4. Department created.

A. The "public education department" is created in the executive branch. The department is a cabinet department and includes the following divisions:

(1) the administrative services division;

(2) the assessment and accountability division;

(3) the charter schools division;

(4) the educator quality division;

(5) the Indian education division;

(6) the information technology division;

(7) the instructional support and vocational education division;

(8) the program support and student transportation division;

(9) the quality assurance and systems integration division;

(10) the rural education division; and

(11) the vocational rehabilitation division.

B. The secretary may organize the department and divisions of the department and may transfer or merge functions between divisions and bureaus in the interest of efficiency and economy.

History: Laws 2004, ch. 27, § 4; 2005, ch. 286, § 2; 2006, ch. 94, § 1.

ANNOTATIONS

Cross references. — For the Public School Code, *see* 22-1-1 NMSA 1978.

For the public education department, *see* N.M. Const., art. XII, § 6 and 9-24-15 NMSA 1978.

The 2006 amendment, effective July 1, 2007, added Paragraph (3) of Subsection A to include the charter schools division.

The 2005 amendment, effective June 17, 2005, added the enumeration of divisions in Subsections A(1) through (10); deleted the former provision of Subsection B, which provided that the secretary make recommendations to the legislature on the statutory organization of the department and provides for the divisions of the department until it was statutorily organized.

9-24-5. Secretary; appointment.

A. The administrative head of the department is the "secretary of public education", 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: Laws 2004, ch. 27, § 5.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

Compiler's notes. — Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-4 and 9-24-15 NMSA 1978 and N.M. Const., art. XII, § 6, for the powers and duties of the secretary of public education.

The state superintendent of public instruction and the state board of education were created by N.M. Const., art. XII, § 6. The public school finance division of the department of finance and administration was created by Laws 1957, ch. 249 to advise and consult with the superintendent of public instruction. The administrative head of the public school finance division was the chief of the public school finance division. The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3 established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the "director" of the

public school finance division as the administrative and executive head. Laws 1980, ch. 151 abolished the educational finance and cultural affairs department and the public school finance division was again placed under the department of finance and administration. Laws 1983, ch. 301, § 83, abolished the public school finance division of the department of finance and administration and § 69 of that act created the office of education of the department of finance and administration and designated the administrative and executive head of the office of education as the director of the office of education. Laws 1983, ch. 301, § 83 also provides that all references to the director or chief of public school finance shall be construed to be references to the director of the office of education. Laws 1988, ch. 64, § 3, compiled as 9-6-3.1 NMSA 1978, abolished the office of education and transferred all powers and duties of the office of education to 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 were transferred to the superintendent of public instruction. N.M. Const., art. XII, § 6 was amended effective September 23, 2003 to replace the former state board of education with the public education commission, replace the superintendent of public instruction with the secretary of public education and provide that the secretary of public education shall exercise all functions relating to the distribution of school funds and financial accounting for public schools.

Cross references. — For the secretary of public education, *see* N.M. Const., art. XII, § 6, 9-24-5 and 9-24-15 NMSA 1978.

For the Public School Code, *see* 22-1-1 NMSA 1978 et seq.

9-24-6. Division directors.

The secretary shall appoint, with the approval of the governor, directors of the divisions established within the department. Division directors are exempt from the Personnel Act [Chapter 10, Article 9 NMSA 1978].

History: Laws 2004, ch. 27, § 6.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-24-7. Bureau chiefs.

The secretary may establish within each division of the department such bureaus as he deems necessary to carry out the provisions of the Public Education Department Act. 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 [Chapter 10, Article 9 NMSA 1978].

History: Laws 2004, ch. 27, § 7.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-24-8. Secretary; duties and general powers.

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

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

(1) except as otherwise provided in the Public Education Department Act or the Public School Code [Chapter 22, Article 1 NMSA 1978], exercise general supervisory and appointing power over all department employees, subject to applicable personnel laws and rules;

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

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

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

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

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

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

comprehensive, coordinated and culturally sensitive services that address the education of the whole child;

(8) prepare an annual budget for the department; and

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

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

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

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

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

D. The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions. No rule 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 rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The final public hearing on adoption, amendment or repeal of a rule shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, 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 rule or proposed amendment or repeal of an existing rule 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 shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: Laws 2004, ch. 27, § 8.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

Authority of secretary of public education to revoke teachers' licenses. — Article XII, Section 6 of the New Mexico Constitution, the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the Public Education Department Act [Chapter 9, Article 24 NMSA 1978], the Public School Code [Chapter 22 NMSA 1978], and the School Personnel Act [Chapter 22, Article 10A NMSA 1978], do not preclude the secretary of public education from having exclusive authority to make the final decision to revoke a teacher's license. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

Secretary's authority to disregard hearing officer's credibility determination. — Where plaintiff was charged with engaging in inappropriate and improper sexual behavior with a fourteen-year-old victim at a charter school; a hearing officer found that the charges against plaintiff had not been proven by a preponderance of the evidence and recommended that the disciplinary action against plaintiff be dismissed; the secretary of public education reviewed the record before the hearing officer, adopted some of the hearing officer's recommendations and rejected others, and concluded that a preponderance of the evidence warranted revocation and revoked plaintiff's license to teach; the essential difference between the hearing officer's view of the case and that of the secretary was how they viewed the credibility of plaintiff and the victim and the believability of their testimony; the regulations of the public education department provided that the hearing officer had the duty to make proposed findings and conclusions; the secretary was not an appellate reviewer of the hearing officer's findings and conclusions, the secretary had the authority, after reviewing the record, to modify the hearing officer's findings and conclusions; and the secretary was ultimately responsible for issuing a final decision; and after reviewing the record, the secretary made independent findings of fact that were supported by references to the hearing transcript, the secretary did not exceed the secretary's authority by making the secretary's own credibility or fact-based determinations. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

Revocation of teacher's license did not violate due process. — Where plaintiff was charged with engaging in inappropriate and improper sexual behavior with a fourteen-year-old victim at a charter school; a hearing officer found that the charges against plaintiff had not been proven by a preponderance of the evidence, based in part on the credibility of the witnesses, and recommended that the disciplinary action against plaintiff be dismissed; the secretary of public education reviewed the record and concluded that a preponderance of the evidence warranted revocation; the secretary's conclusions were supported by the record and were based on the secretary's analysis of the facts presented by the witnesses, the contradictions in the facts, and the victim's written statement, plaintiff was not denied due process by the fact that the secretary failed to observe the witnesses' demeanor or by the secretary's failure to defer to the hearing officer's proposed findings of fact. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

Revocation of teacher's license was supported by substantial evidence. — Where plaintiff was charged with engaging in inappropriate and improper sexual behavior with

a fourteen-year-old victim; the victim was considering attending the charter school; the owners and operators of the school, who were the godparents of the victim, hosted an event in their home; the victim and plaintiff stayed overnight and slept in the living room where the alleged contact occurred when the victim and plaintiff were alone, the decision of the secretary of public education to revoke plaintiff's teacher's license was supported by substantial evidence. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

Amendment to rule, without notice or public hearing, violated this section. — Where a current New Mexico regulation, 6.60.6.9 NMAC (2010), did not provide for any flexibility for a teacher to advance if he/she did not meet competency by being rated ineffective or minimally effective, and where the public education department issued a memorandum, which effectively changed the requirements of the regulation by allowing level 1 and level 2 teachers whose contracts expired in June 2015 to advance with a minimally competent rating, the memorandum violates 9-24-8(D) NMSA 1978, because the public education department, without notice or public hearing, amended a rule which affects superintendents of and teachers employed by local school districts and charter schools, or "persons outside the [public education] department." *Validity of Guidelines Amending Public Education Department Regulations Governing Teacher Licensure Advancement* (11/13/18), Att'y Gen. Adv. Ltr. 2018-06.

9-24-9. Public education commission.

A. The "public education commission" is created pursuant to Article 12, Section 6 of the constitution of New Mexico. The commission shall be administratively attached to the department, with administrative staff provided by the department. Additional requests for staff services shall be made through the secretary. The commission shall advise the department on policy matters and shall perform other functions as provided by law.

B. The commission shall consist of ten members elected from public education districts as provided in the decennial educational redistricting act. Members shall be entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other perquisite, compensation or allowance.

C. The commission shall annually elect a chairman, vice chairman and secretary from among its membership. A majority of the members constitutes a quorum for the conduct of business. The commission shall keep a record of all proceedings of the commission.

D. The commission shall meet at the call of the chairman at least quarterly. Meetings of the commission shall be held in Santa Fe and at other sites within the state at the direction of the commission. The chairman in consultation with the secretary shall call a meeting at the request of a majority of the members. Commission members shall not vote by proxy.

E. No member of the commission shall be appointed secretary or be employed by the department on either a full- or part-time basis.

History: Laws 2004, ch. 27, § 9.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

Cross references. — For the public education commission, *see* N.M. Const., art. XII, § 6.

For the powers and duties of the commission relating to charter schools, *see* § 22-8B-16 NMSA 1978.

Public education commission's implied authority to issues rules and regulations governing the operation and oversight of state-chartered charter schools. — Agencies are created by statute, and are limited to the power and authority expressly granted or necessarily implied by those statutes, and although the legislature did not grant the public education commission express authority to issue rules and regulations governing the operation and oversight of state-chartered charter schools, a court could reasonably find that its authority to do so may be fairly implied from the "powers and duties" expressly set forth in NMSA 1978, § 22-8B-16 and those "functions" specified in 22-8B-5.3 NMSA 1978. *Public Education Commission Required by Law to Follow State Rules Act* (12/6/2022), Att'y Gen. Adv. Ltr. 2022-19.

Issuance of rules by the Public Education Commission must comply with the requirements of the State Rules Act. — The Public Education Commission's actions in issuing or adopting resolutions, standards, procedures, directives and policies affecting the rights of state-chartered charter schools and their public school students constitute rules and therefore fall within the ambit of the State Rules Act, §§ 14-4-1 to -11 NMSA 1978, and their issuance must comply with the requirements of the State Rules Act in order to be valid. *Public Education Commission Required by Law to Follow State Rules Act* (12/6/2022), Att'y Gen. Adv. Ltr. 2022-19.

9-24-10. Organizational units of the department; powers and duties specified by law; access to information.

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, who shall retain the final decision-making authority and responsibility for the administration of any laws as provided in Subsection B of Section 8 [9-24-8 NMSA 1978] of the Public Education 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 2004, ch. 27, § 10.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-24-11. Advisory committees.

A. Advisory committees may be created. "Advisory" means furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or to comply with federal or private funding requirements and does not extend to administering a program or function or setting policy unless specified by law. Advisory committees shall be appointed in accordance with the provisions of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978].

B. All members of advisory committees appointed under the authority of this section shall receive as their sole remuneration for services as a member those amounts authorized under the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: Laws 2004, ch. 27, § 11.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-24-12. 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 education programs in which financial or other participation by the federal government is authorized or mandated under state or federal laws, rules or orders. The secretary may enter into agreements with agencies of the federal government to implement education 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 public school program when that designation is a condition of federal financial or other participation in the program under applicable federal law, 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 public school program. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

History: Laws 2004, ch. 27, § 12.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-24-13. Public education department.

The public education department shall appoint the secretary of public education or the secretary's designee to serve as a member of the interagency behavioral health purchasing collaborative and shall ensure that any behavioral health services, including mental health and substance abuse services funded, provided, contracted for or approved, are in compliance with the requirements of Section 9-7-6.4 NMSA 1978.

History: Laws 2004, ch. 46, § 17.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 46 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

9-24-14. Temporary provision; transfer.

On July 1, 2003:

A. all personnel of the deficiencies correction unit of the public school capital outlay council and up to four full-time employees of the capital outlay unit of the state department of public education are transferred to the public school facilities authority. The superintendent of public instruction and the public school capital outlay council shall jointly determine the employees of the capital outlay unit to be transferred pursuant to this subsection; provided that employees subject to the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978] prior to the transfer shall remain subject to the provisions of that act subsequent to the transfer;

B. all appropriations, money, records, property, equipment and supplies of the public school capital outlay council and the state department of public education that are primarily associated with the personnel described in Subsection A of this section are transferred to the public school facilities authority;

C. all contracts and agreements of the public school capital outlay council and the state department of public education relating to the activities of the personnel described in Subsection A of this section are transferred to the public school facilities authority; and

D. the superintendent of public instruction and the public school capital outlay council shall jointly identify the property to be transferred pursuant to Subsections B and C of this section.

History: Laws 2003, ch. 147, § 13.

ANNOTATIONS

ANNOTATIONS

Effective dates. — Laws 2003, ch. 147, § 15 made Laws 2003, ch. 147, § 13 effective July 1, 2003.

9-24-15. Temporary provision; transfers; statutory references.

A. All appropriations, money, personnel, records, files, furniture, equipment, supplies and other property of the state department of public education are transferred to the public education department.

B. All contractual obligations of the state department of public education shall be binding on the public education department.

C. All references in law to the state board of education shall be deemed to be references to the public education department. All references to the state department of public education or the department of education shall be deemed to be references to the public education department. All references in law to the state superintendent or the superintendent of public instruction shall be deemed to be references to the secretary of public education.

History: Laws 2004, ch. 27, § 27.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

Compiler's notes. — Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-4 and 9-24-15 NMSA 1978 and N.M. Const., art. XII, § 6, for the powers and duties of the secretary of public education.

The state superintendent of public instruction and the state board of education were created by N.M. Const., art. XII, § 6. The public school finance division of the department of finance and administration was created by Laws 1957, ch. 249 to advise and consult with the superintendent of public instruction. The administrative head of the public school finance division was the chief of the public school finance division. The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3 established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the "director" of the public school finance division as the administrative and executive head. Laws 1980, ch. 151 abolished the educational finance and cultural affairs department and the public school finance division was again placed under the department of finance and administration. Laws 1983, ch. 301, § 83 abolished the public school finance division of the department of finance and administration and § 69 of that act created the office of education of the department of finance and administration and designated the administrative and executive head of the office of education as the director of the office of education. Laws 1983, ch. 301, § 83 also provides that all references to the director or chief of public school finance shall be construed to be references to the director of the office of education. Laws 1988, ch. 64, § 3, compiled as 9-6-3.1 NMSA 1978, abolished the office of education and transferred all powers and duties of the office of education to 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 were transferred to the superintendent of public instruction. N.M. Const., art. XII, § 6 was amended effective September 23, 2003 to replace the former state board of education with the public education commission, replace the superintendent of public instruction with the secretary of public education and provide that the secretary of public education shall exercise all functions relating to the distribution of school funds and financial accounting for public schools.

Cross references. — For constitutional powers relating to the creation of the public education department, public education commission and the secretary of public education, *see* N.M. Const., art. XII, § 6.

For the public education department, *see* 9-24-4 NMSA 1978.

For the secretary of public education, *see* 9-24-5 and 9-24-8 NMSA 1978.

ANNOTATIONS

ARTICLE 25
Higher Education Department

9-25-1. Short title.

Sections 1 through 13 [9-25-1 to 9-25-13 NMSA 1978] of this act may be cited as the "Higher Education Department Act".

History: Laws 2005, ch. 289, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2005, ch. 289, § 31 contained an emergency clause and was approved April 7, 2005.

9-25-2. Purpose.

The purpose of the Higher Education Department Act is to establish a single, unified department to administer laws and exercise functions formerly administered and exercised by the commission on higher education.

History: Laws 2005, ch. 289, § 2.

ANNOTATIONS

Emergency clauses. — Laws 2005, ch. 289, § 31 contained an emergency clause and was approved April 7, 2005.

9-25-3. Definitions.

As used in the Higher Education Department Act:

A. "board" means the higher education advisory board;

B. "department" means the higher education department; and

C. "secretary" means the secretary of higher education.

History: Laws 2005, ch. 289, § 3.

ANNOTATIONS

Emergency clauses. — Laws 2005, ch. 289, § 31 contained an emergency clause and was approved April 7, 2005.

9-25-4. Department created.

A. The "higher education department" is created in the executive branch. The department is a cabinet department and includes the following divisions:

(1) the administrative services division;

(2) the planning and research division;

(3) the financial aid division;

(4) the public information and communications division;

(5) the adult basic education division;

(6) the information technology division;

(7) the private and proprietary schools division;

(8) the public schools liaison division; and

(9) the American Indian post-secondary education division.

B. The secretary may organize the department and divisions of the department and may transfer or merge functions between divisions and bureaus in the interest of efficiency and economy.

History: Laws 2005, ch. 289, § 4; 2007, ch. 22, § 1; 2009, ch. 60, § 1.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, added Paragraph (9) of Subsection A.

The 2007 amendment, effective June 15, 2007, in Subsection A, deleted the former provision that the secretary shall organize the department so that bureaus and divisions exist to focus on the needs of diverse categories of post-secondary institutions; added Paragraphs (1) through (8) of Subsection A to create divisions; and added Subsection B to provide that the secretary may organize the department and its divisions and assign functions among divisions and bureaus.

9-25-4.1. Temporary provision; transfers.

A. On the effective date of this act, all functions, appropriations, money, personnel, records, files, furniture, equipment and other property of the commission on higher education shall be transferred to the higher education department.

B. On the effective date of this act, all contractual obligations of the commission on higher education shall be binding on the higher education department.

C. On the effective date of this act, all references in law to the commission on higher education shall be deemed to be references to the higher education department and all references in law to the executive director of the commission on higher education shall be deemed to be references to the secretary of higher education.

History: Laws 2005, ch. 289, § 29.

ANNOTATIONS

Emergency clauses. — Laws 2005, ch. 289, § 31 contained an emergency clause and was approved April 7, 2005.

9-25-5. Secretary; appointment.

A. The administrative head of the department is the "secretary of higher education", who shall be appointed by the governor with the consent of the senate and who shall serve in the executive cabinet. The secretary shall possess a terminal degree from a regionally accredited post-secondary educational institution, a minimum of five years of senior administrative experience, experience in higher education and experience in the development of public policy at the state or federal level.

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 the secretary's appointment.

History: Laws 2005, ch. 289, § 5.

ANNOTATIONS

Emergency clauses. — Laws 2005, ch. 289, § 31 contained an emergency clause and was approved April 7, 2005.

9-25-6. Division directors.

The secretary shall appoint directors of the divisions established within the department. Division directors are exempt from the Personnel Act [Chapter 10, Article 9 NMSA 1978].

History: Laws 2005, ch. 289, § .6

ANNOTATIONS

Emergency clauses. — Laws 2005, ch. 289, § 31 contained an emergency clause and was approved April 7, 2005.

9-25-7. Bureau chiefs.

The secretary may establish within each division of the department such bureaus as the secretary deems necessary to carry out the provisions of the Higher Education Department Act. The secretary 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 [Chapter 10, Article 9 NMSA 1978].

History: Laws 2005, ch. 289, § 7.

ANNOTATIONS

Emergency clauses. — Laws 2005, ch. 289, § 31 contained an emergency clause and was approved April 7, 2005.

9-25-8. Secretary; duties and general powers.

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

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

(1) except as otherwise provided in the Higher Education Department Act or Chapter 21 NMSA 1978, exercise general supervisory and appointing power over all department employees, subject to applicable personnel laws and rules;

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

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

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

(5) take administrative action by issuing orders and instructions, not inconsistent with law, to ensure implementation of and compliance with the provisions of

law for which administration or execution the secretary is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

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

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

(8) prepare an annual budget for the department; and

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

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

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

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

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

D. The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions. No rule 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 rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. No rule promulgated by the department shall infringe upon the authority vested by Article 12 of the constitution of New Mexico in the boards of regents of the educational institutions specified in that article. The final public hearing on adoption, amendment or repeal of a rule shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, 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 rule or proposed amendment or repeal of an existing rule 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 shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: Laws 2005, ch. 289, § 8.

ANNOTATIONS

Temporary provisions. — Laws 2016, ch. 3, § 1, effective May 18, 2016, provided that the higher education department, in coordination with the institutions of higher education in New Mexico, shall study, create and implement a consistent policy and develop a single articulation agreement for the state, regarding the evaluation and award of academic credit based on an active duty member of the United States military or a veteran's military training and experience toward associate's, bachelor's, master's and doctoral degrees. The department shall present a report on the policy, its implementation and the articulation agreement to the military and veterans' affairs committee and the legislative education study committee by November 1, 2016.

9-25-9. Additional duties.

Consistent with constitutional provisions relating to the control and management of the educational institutions enumerated in Article 12, Section 11 of the constitution of New Mexico, the department shall:

A. cooperate with colleges and universities to create a statewide public agenda to meet higher education needs and goals;

B. periodically study and report to the governor and the legislative finance committee on enrollment capacity needs over a ten-year period, based on state demographic models, academic program demands, institutional competencies and infrastructure, state workforce needs, economic development goals and other factors; and

C. by November 1 of each year, present to the legislature a comprehensive funding request and a legislative priorities list for all higher education. The funding request and priorities shall encompass the needs of all public post-secondary educational institutions and programs.

History: Laws 2005, ch. 289, § 9.

ANNOTATIONS

Emergency clauses. — Laws 2005, ch. 289, § 31 contained an emergency clause and was approved April 7, 2005.

9-25-10. Higher education advisory board; membership; terms; administrative attachment.

A. The "higher education advisory board" is created to advise the department and the governor on policy matters and perform other functions as provided by law. The

board is administratively attached to the department, with administrative staff provided by the department.

B. The secretary shall appoint fourteen members giving due regard to geographic representation, cultural diversity and the composition of higher education institutions in New Mexico. Four members shall represent the four-year public post-secondary educational institutions, one of whom shall represent the university of New Mexico, one of whom shall represent New Mexico state university, one of whom shall represent New Mexico institute of mining and technology and one of whom shall represent either New Mexico highlands university, eastern New Mexico university or western New Mexico university; three members shall represent the two-year public post-secondary educational institutions; one member shall represent the accredited private post-secondary educational institutions; one member shall represent business; one member shall represent college and university faculty; one member shall represent college and university nonfaculty staff; one member shall be a college or university student; one representative of the tribal colleges in New Mexico; and one representative of the Indian nations, tribes and pueblos in New Mexico. The members representing the categories of post-secondary educational institutions shall be the chief executive officers of the institutions of those categories or the chief executive officers' designees. The members representing faculty and nonfaculty staff and the student member shall be the leaders of faculty, staff and student organizations at their respective institutions.

C. Four members of the initial board, including the student member, shall be appointed for two years, five members shall be appointed for three years and five members shall be appointed for four years; thereafter, the student member shall serve a two-year term and the other members shall serve four-year terms. Members are entitled to 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 perquisite, compensation or allowance.

D. The board shall annually elect a chair, vice chair and secretary from among its membership. A majority of the members constitutes a quorum for the conduct of business.

E. The board shall meet at the call of the chair at least quarterly. Meetings of the board shall be held in Santa Fe and at other sites within the state at the direction of the board.

History: Laws 2005, ch. 289, § 10.

ANNOTATIONS

Emergency clauses. — Laws 2005, ch. 289, § 31 contained an emergency clause and was approved April 7, 2005.

9-25-11. Organizational units of the department; powers and duties specified by law; access to information.

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, who shall retain the final decision-making authority and responsibility for the administration of any laws as provided in Subsection B of Section 8 [9-25-8 NMSA 1978] of the Higher Education 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; provided, however, that when the department requires confidential institutional data, including student records and other information necessary to fulfill the functions of the department, the secretary and the institution shall cooperate to provide the department with information adequate to meet its needs while meeting all legal requirements to ensure the confidentiality of such information and records.

History: Laws 2005, ch. 289, § 11.

ANNOTATIONS

Emergency clauses. — Laws 2005, ch. 289, § 31 contained an emergency clause and was approved April 7, 2005.

9-25-12. 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 higher education programs in which financial or other participation by the federal government is authorized or mandated under state or federal laws, rules or orders. The secretary may enter into agreements with agencies of the federal government to implement higher education 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 higher education program when that designation is a condition of federal financial or other participation in the program under applicable federal law, 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 federally funded higher education program not targeted for specific post-secondary educational institutions. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

History: Laws 2005, ch. 289, § 12.

ANNOTATIONS

Emergency clauses. — Laws 2005, ch. 289, § 31 contained an emergency clause and was approved April 7, 2005.

9-25-13. Advisory committees.

A. In addition to the higher education advisory board, the department may create other advisory committees. "Advisory" means furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or to comply with federal or private funding requirements and does not extend to administering a program or function or setting policy unless specified by law. Advisory committees shall be appointed in accordance with the provisions of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978].

B. All members of advisory committees are entitled to 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 2005, ch. 289, § 13.

ANNOTATIONS

Emergency clauses. — Laws 2005, ch. 289, § 31 contained an emergency clause and was approved April 7, 2005.

ARTICLE 26
Workforce Solutions Department

9-26-1. Short title.

Chapter 9, Article 26 NMSA 1978 may be cited as the "Workforce Solutions Department Act".

History: Laws 2007, ch. 200, § 1; 2022, ch. 13, § 1.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, deleted "Sections 1 through 14 of this act" and added "Chapter 9, Article 26 NMSA 1978".

9-26-2. Purpose.

The purpose of the Workforce Solutions Department Act is to establish a single, unified department to administer all laws and exercise all functions formerly

administered and exercised by the labor department and the office of workforce development.

History: Laws 2007, ch. 200, § 2.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 200, § 25 made the Workforce Solutions Department Act effective July 1, 2007.

9-26-3. Definitions.

As used in the Workforce Solutions Department Act:

A. "department" means the workforce solutions department; and

B. "secretary" means the secretary of workforce solutions.

History: Laws 2007, ch. 200, § 3.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 200, § 25 made the Workforce Solutions Department Act effective July 1, 2007.

9-26-4. Workforce solutions department created.

The "workforce solutions department" is created in the executive branch pursuant to the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978]. The department is a cabinet department that includes:

A. the office of the secretary;

B. the administrative services division;

C. the business services division;

D. the labor relations division;

E. the workforce technology division; and

F. the workforce transition services division.

History: Laws 2007, ch. 200, § 4.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 200, § 25 made the Workforce Solutions Department Act effective July 1, 2007.

9-26-5. Secretary of workforce solutions; appointment.

A. The chief executive and administrative officer of the department is the "secretary of workforce solutions". 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 the appointment.

History: Laws 2007, ch. 200, § 5.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 200, § 25 made the Workforce Solutions Department Act effective July 1, 2007.

9-26-6. Secretary; general powers and duties.

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

B. To perform the secretary's 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 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 Workforce Solutions Department 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 the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

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

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

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to ensure implementation of and compliance with the provisions of law with the administration or execution of which the secretary 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; and

(10) within budgetary limits, appoint such staff as required to carry out the duties of the secretary or the department.

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

D. 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 as may be necessary to carry out the duties of the department and its divisions. No rule 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 rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, 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 rule, proposed amendment or repeal of an existing rule 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. All rules shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: Laws 2007, ch. 200, § 6.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 200, § 25 made the Workforce Solutions Department Act effective July 1, 2007.

9-26-7. Administratively attached agencies.

The following are administratively attached to the department:

A. the human rights commission;

B. the labor and industrial commission; and

C. the state workforce development board.

History: Laws 2007, ch. 200, § 7.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 200, § 25 made the Workforce Solutions Department Act effective July 1, 2007.

9-26-8. Division 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 [Chapter 10, Article 9 NMSA 1978].

History: Laws 2007, ch. 200, § 8.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 200, § 25 made the Workforce Solutions Department Act effective July 1, 2007.

9-26-9. Bureau; chiefs.

The secretary shall establish within each division such bureaus as the secretary deems necessary to carry out the provisions of the Workforce Solutions Department Act. The secretary shall employ a chief to be administrative head of each bureau.

History: Laws 2007, ch. 200, § 9.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 200, § 25 made the Workforce Solutions Department Act effective July 1, 2007.

9-26-10. Personnel Act coverage.

All employees and positions in the department, except for the positions of secretary and division directors and other positions expressly permitted to be exempt by the Personnel Act [Chapter 10, Article 9 NMSA 1978], shall be covered by and shall be subject to the provisions of the Personnel Act. The secretary is the appointing authority.

History: Laws 2007, ch. 200, § 10.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 200, § 25 made the Workforce Solutions Department Act effective July 1, 2007.

9-26-11. Cooperation with 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 organizational 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 2007, ch. 200, § 11.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 200, § 25 made the Workforce Solutions Department Act effective July 1, 2007.

9-26-12. 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 2007, ch. 200, § 12.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 200, § 25 made the Workforce Solutions Department Act effective July 1, 2007.

9-26-13. 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 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 6 [9-26-6 NMSA 1978] of the Workforce Solutions 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.

History: Laws 2007, ch. 200, § 13.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 200, § 25 made the Workforce Solutions Department Act effective July 1, 2007.

9-26-14. Disclosure of information.

To the extent permitted by federal law, upon the written request of a corporation organized pursuant to the Educational Assistance Act [Chapter 21, Article 21A NMSA 1978], the department shall furnish the last known address and the date of that address of every person certified to the department as being an absent obligor of an educational debt that is due and owed to the corporation or that the corporation has lawfully contracted to collect. The corporation and its officers and employees shall use such information only for the purpose of enforcing the educational debt obligation of such absent obligors and shall not disclose that information or use it for any other purpose.

History: Laws 2007, ch. 200, § 14.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 200, § 25 made the Workforce Solutions Department Act effective July 1, 2007.

9-26-15. Repealed.

History: Laws 2007, ch. 200, § 23; repealed by Laws 2022, ch. 13, § 3.

ANNOTATIONS

Repeals. — Laws 2022, ch. 13, § 3 repealed 9-26-15 NMSA 1978, as enacted by Laws 2007, ch. 200, § 23, relating to temporary provisions, transfers, effective May 18, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

9-26-16. Background checks; authorization; procedures; rulemaking; confidentiality; penalties.

A. The department shall require fingerprint-based records on:

(1) department employees who have or will have access to federal tax information; and

(2) finalists for employment by the department who have or may have access to federal tax information.

B. The department shall request the fingerprint-based criminal history record for each subject required pursuant to Subsection A from:

(1) the department of public safety, which shall:

(a) conduct a criminal history background check to determine the existence and content of a record of convictions and arrests of the subject in this state, in accordance with rules of the department of public safety;

(b) provide the fingerprint-based record to the federal bureau of investigation to obtain a national criminal history background check to determine the existence and content of a record of convictions and arrests of the subject in other law enforcement jurisdictions, in accordance with regulations of the federal bureau of investigation; and

(c) compile and provide the information determined and obtained pursuant to this subsection to the department; and

(2) the law enforcement agency of each county and municipality in which the subject lived, worked or attended any high school or post-secondary educational institution, which shall conduct a criminal history background check to determine the existence and content of a record of convictions and arrests of the subject in the law enforcement agency's respective jurisdiction within the last five years and provide that information to the department.

C. Subject to any restrictions imposed by federal law, the department shall have access to the information furnished by the federal bureau of investigation, the department of public safety and any other law enforcement agency or organization pursuant to Subsection B of this section.

D. A finalist for employment by the department shall not be hired for a position that provides access to federal tax information before the completion of the criminal history background checks required by this section.

E. Before entering into a contract with the department or with a contractor of the department, a prospective contractor or subcontractor who may have access to federal tax information pursuant to specific duties that would be assigned to that person by the department shall arrange to have criminal history background checks to be conducted by the department of public safety and the necessary law enforcement agencies as required pursuant to Subsection B of this section for department employees and finalists for employment by the department. That person shall bear the costs associated with obtaining the criminal history background checks.

F. The department shall use the information obtained from a criminal history background check pursuant to this section only to investigate and determine whether a department employee or finalist for employment by the department or prospective contractor or prospective subcontractor with the department has been convicted of a crime that has a direct impact on the ability of that person to meet federal requirements or to perform the specific duties assigned to that person. The provisions of the Criminal Offender Employment Act [Chapter 28, Article 2 NMSA 1978] shall govern consideration

of criminal history records of employees and finalists for employment obtained pursuant to this section. The secretary may deny or terminate employment of a person who has been convicted of a felony or other crime that directly reflects on the person's ability to access federal tax information.

G. The department shall conduct a check for eligibility to legally work in the United States on each department employee and each finalist for employment by the department who has or may have access to federal tax information. The department shall complete a check every five years for continued eligibility to legally work in the United States.

H. The information obtained from criminal history background checks or legal residency background checks pursuant to this section is confidential and shall not be released or disclosed by the department except pursuant to a court order or with written consent of the person who is the subject of the records. A person who releases or discloses information obtained pursuant to a criminal history background check or legal residency background check in violation of the provisions of this subsection is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2022, ch. 13, § 2.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

ARTICLE 27
Department of Information Technology

9-27-1. Short title.

Chapter 9, Article 27 NMSA 1978 may be cited as the "Department of Information Technology Act".

History: Laws 2007, ch. 290, § 1; 2008, ch. 84, § 1.

ANNOTATIONS

The 2008 amendment, effective May 14, 2008, added the statutory reference to the act.

9-27-2. Purpose.

The purpose of the Department of Information Technology Act is to create a single, unified executive branch department to administer all laws and exercise all functions formerly administered by the office of the chief information officer, the information technology commission, pursuant to the Information Technology Management Act, and the communications division, information systems division, radio communications bureau and telecommunications bureau of the general services department to consolidate enterprise information technology services duplicated within executive agencies and provide additional information technology services and functionality to improve and streamline the executive branch's information technology systems.

History: Laws 2007, ch. 290, § 2.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 290, § 28 made the Department of Information Technology Act effective July 1, 2007.

9-27-3. Definitions.

As used in the Department of Information Technology Act:

A. "agency", unless otherwise specified, means executive branch cabinet agencies and their administratively attached agencies, offices, boards and commissions;

B. "cybersecurity" means acts, practices or systems that eliminate or reduce the risk of loss of critical assets, loss of sensitive information or reputational harm as a result of a cyberattack or breach within an organization's telecommunication network;

C. "department" means the department of information technology;

D. "information technology" means computer hardware, storage media, networking equipment, physical devices, infrastructure, processes and code, firmware, software and ancillary products and services, including:

(1) systems design and analysis;

(2) development or modification of hardware or solutions used to create, process, store, secure or exchange electronic data;

(3) information storage and retrieval systems;

(4) voice, radio, video and data communication systems;

(5) network, hosting and cloud-based systems;

(6) simulation and testing; and

(7) interactions between a user and an information system;

E. "information technology project" means the purchase, replacement, development or modification of a hardware or software system;

F. "secretary" means the secretary of information technology;

G. "state information architecture" means a logically consistent set of principles, policies and standards that guides the engineering of state government's information technology systems and infrastructure in a way that ensures alignment with state government's business needs;

H. "state information technology strategic plan" means the information technology planning document for the state that spans a three-year period; and

I. "telecommunication network" means the physical and logical components and all associated infrastructure used in transporting, routing, aggregating and delivering voice and data information from computer and telecommunications systems in one location to peer systems in another.

History: Laws 2007, ch. 290, § 3; 2017, ch. 7, § 1; 2023, ch. 132, § 1.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, defined "agency" and "cybersecurity" and revised the definition of "information technology"; added new Subsections A and B and redesignated former Subsections A through G as Subsections C through I, respectively; and in Subsection D, after "computer hardware", deleted "and software and ancillary products and services, including" and added "storage media, networking equipment, physical devices, infrastructure, processes and code, firmware, software and ancillary products and services, including", and deleted Paragraphs (1) through (8) and added Paragraphs D(1) through D(7).

The 2017 amendment, effective June 16, 2017, added the definition of "telecommunication network" to the Department of Information Technology Act; and added Subsection G.

9-27-4. Department created; divisions.

A. The "department of information technology" is created. The department is a cabinet department and includes the following divisions:

(1) program support division;

(2) compliance and project management division; and

(3) enterprise services division.

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

History: Laws 2007, ch. 290, § 4.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 290, § 28 made the Department of Information Technology Act effective July 1, 2007.

9-27-5. Secretary of information technology; appointment.

A. The chief executive and administrative officer of the department is the "secretary of information technology". The secretary shall serve as the state's chief information officer. 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 the secretary-designate's appointment.

History: Laws 2007, ch. 290, § 5.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 290, § 28 made the Department of Information Technology Act effective July 1, 2007.

9-27-6. Secretary; duties and general powers.

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

B. To perform the secretary's 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) exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

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

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

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

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to ensure implementation of and compliance with the provisions of law for whose administration or execution the secretary 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 state agencies and the residents 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, recordkeeping and related clerical assistance to administratively attached agencies;

(10) appoint for each division a "director". These appointed positions are exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978]. Persons appointed to these positions shall serve at the pleasure of the secretary; and

(11) acquire, hold and maintain, through lease, trade or purchase, any real or personal property necessary to meet customer requirements or department obligations, including obligations of administratively attached offices or bodies.

C. As the chief information officer, the secretary shall:

(1) review agency plans regarding prudent allocation of information technology resources; reduction of duplicate or redundant data, hardware and software; and improvement of system interoperability and data accessibility among agencies;

(2) approve agency information technology requests for proposals and other agency requests that are subject to the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], prior to final approval;

(3) promulgate rules for oversight of information technology procurement;

(4) approve agency information technology contracts and amendments to those contracts, including emergency procurements, sole source contracts and price agreements, prior to approval by the department of finance and administration;

(5) develop and implement procedures to standardize data elements, determine data ownership and ensure data sharing among executive agencies;

(6) verify compliance with state information architecture and the state information technology strategic plan before approving documents referred to in Paragraphs (2) and (4) of this subsection;

(7) monitor agency compliance with its agency plan, the state information technology strategic plan and state information architecture and report to the governor, executive agency management and the legislative finance committee on noncompliance;

(8) develop information technology cost recovery mechanisms and information systems rate and fee structures of state agencies and other public or private sector providers and make recommendations to the information technology rate committee;

(9) provide technical support to executive agencies in the development of their agency plans;

(10) ensure the use of existing public or private information technology or telecommunications resources when the use is practical, efficient, effective and financially prudent and is in compliance with the Procurement Code;

(11) review appropriation requests related to agency information technology requests to ensure compliance with agency plans and the state information technology strategic plan and make written recommendations by November 14 of each year to the department of finance and administration and by November 21 of each year to the legislative finance committee and the appropriate interim legislative committee; provided, however, that the recommendations to the legislative committees have been

agreed to by the department of information technology and the department of finance and administration;

(12) promulgate rules to ensure that information technology projects satisfy criteria established by the secretary and are phased in with funding released in phases contingent upon successful completion of the prior phase;

(13) provide oversight of information technology projects, including ensuring adequate risk management, disaster recovery and business continuity practices and monitoring compliance with strategies for information technology projects that affect multiple agencies;

(14) conduct reviews of information technology projects and provide written reports to the appropriate legislative oversight bodies;

(15) conduct background checks on department employees and prospective department employees that have or will have administrative access or authority to sensitive, confidential or private information or the ability to alter systems, networks or other information technology hardware or software; and

(16) perform any other information technology function assigned by the governor.

D. As the chief information officer, the secretary may:

(1) upon the advice and recommendation of the director of the office of broadband access and expansion pursuant to the provisions of the Broadband Access and Expansion Act [63-9J-1 to 63-9J-4 NMSA 1978], make available by lease or sale at the department's established rates on a competitively neutral basis such state-owned broadband network infrastructure or internet service that would connect underserved and unserved populations of New Mexico and otherwise support objectives of the state broadband plan;

(2) offer cybersecurity risk prevention and information technology mitigation and response solutions, including application and equipment selection, intrusion response, system monitoring or system testing for all users of agency-operated or -owned information technology, to include compliance standards for broadband infrastructure projects within the oversight or administration of the department; and

(3) establish an administrative hearing and enforcement process internal to the department or in coordination with the administrative hearings office to support the department's private sector regulatory activities or any administratively attached office or body.

E. Each agency shall submit an agency information technology plan to the secretary in the form and detail required by the secretary. Each agency shall conduct background

checks on agency or prospective agency employees that have or will have administrative access or authority to alter systems, networks or other information technology hardware or software.

F. An agency that receives an invoice from the department for services rendered to the agency shall have thirty days from receipt of the invoice to pay the department or to notify the department if the amount of the invoice is in dispute. The agency shall have fifteen days from its notification of dispute to the department to present its reasons in writing and request an adjustment. The department shall have fifteen days from its receipt of the reasons for dispute to notify the agency of its decision. If the department and the agency do not agree on a resolution, the secretary of finance and administration shall make a determination on the amount owed by the agency to the department. If the agency has not paid the department or notified the department of a dispute within thirty days of receipt of the invoice, the department shall notify the department of finance and administration and request that the department of finance and administration transfer funds from the agency to the department of information technology to satisfy the agency's obligation.

G. The secretary, as chief information officer, shall prepare a state information technology strategic plan for the executive branch and update it at least once every three years, which plan shall be available to agencies by July 31 of each year. The plan shall comply with the provisions of the Department of Information Technology Act and provide for the:

(1) interchange of information related to information technology among executive agencies;

(2) coordination among executive agencies in the development and maintenance of information technology systems;

(3) protection of the privacy and security of individual information as well as of individuals using the state's information technology systems;

(4) development of a statewide broadband network plan in conjunction with the public education department, the higher education department, state universities, other educational institutions, the public school capital outlay council, political subdivisions of the state, Indian nations, tribes and pueblos, the public regulation commission and telecommunication network service providers; and

(5) coordination and aggregation of services where feasible for entities as provided for in Section 9-27-20 NMSA 1978 and other publicly funded entities.

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

I. Where information technology functions of executive agencies overlap or a function assigned to one agency could better be performed by another agency, the secretary may recommend appropriate legislation to the next session of the legislature for its approval.

J. Pursuant to the State Rules Act [Chapter 14, Article 4 NMSA 1978] and rules promulgated pursuant to that act, the secretary may make and adopt such reasonable procedural rules as may be necessary to carry out the duties, or relating to any matter within the oversight, of the department and its administratively attached offices or public bodies, divisions and requirements and standards for the executive branch's information technology needs, functions, systems and resources, including:

(1) information technology security;

(2) approval for procurement of information technology not in conflict with the Procurement Code that exceeds an amount set by rule;

(3) detail and format for the agency information technology plan;

(4) acquisition, licensing and sale of information technology; and

(5) requirements for agency information technology projects and related plan, analysis, oversight, assessment and specifications.

K. Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, 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 rule, proposed amendment or repeal of an existing rule 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 an advance notice of hearing. Rules shall be filed in accordance with the State Rules Act.

History: Laws 2007, ch. 290, § 6; 2009, ch. 146, § 2; 2017, ch. 7, § 2; 2017, ch. 45, § 2; 2023, ch. 132, § 2.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, required the secretary of information technology to acquire, hold and maintain, through lease, trade or purchase, any real or personal property necessary to meet customer requirements or department obligations of administratively attached offices or bodies, deleted "executive" preceding each occurrence of "agency" throughout the section; in Subsection B, added Paragraph

B(11); added a new Subsection D and redesignated former Subsections D through J as Subsections E through K, respectively; in Subsection F, deleted "A state" and added "An"; in Subsection H, after "duties or services", added "or those of an administratively attached office or public body"; and in Subsection J, in the introductory clause, added "Pursuant to the State Rules Act and rules promulgated pursuant to that act", after "duties", added "or relating to any matter within the oversight", and after "and its", added "administratively attached offices or public bodies", and in Paragraph J(2), after "technology", added "not in conflict with the Procurement Code".

2017 Amendments. — Laws 2017, ch. 45, § 2, effective June 16, 2017, removed references to the information technology commission, and revised the duties of the secretary of information technology due to the termination of the information technology commission; in Subsection B, Subparagraph B(9)(c), after "budgeting", changed "record-keeping" to "recordkeeping"; and in Subsection C, Paragraph C(11), after "appropriate interim legislative committee", deleted "and the information technology commission", and after "recommendations to the legislative committees", deleted "and the commission", in Paragraph C(13), after "monitoring compliance with strategies", deleted "recommended by the information technology commission", in Paragraph C(14), after "written reports to the", deleted "information technology commission and", and deleted former Paragraph C(16) and redesignated Paragraph C(17) as Paragraph C(16).

Laws 2017, ch. 7, § 2, effective June 16, 2017, required the secretary of information technology to provide for the development of a statewide broadband network plan which is to be included in the secretary’s state information technology strategic plan; and in Subsection F, added Paragraphs F(4) and F(5).

The 2009 amendment, effective June 19, 2009, in Paragraph (6) of Subsection B, after "provision of services to", changed "executive" to "state"; in Paragraph (1) of Subsection C, after "reduction of", added "duplicate or redundant" and after "software", deleted "redundancy"; in Paragraph (2) of Subsection C, after "proposals and", deleted "contract vendor" and added "other executive agency"; in Paragraph (4) of Subsection C, at the end of the sentence, after "administration", deleted "provided, however, that this does not apply to maintenance contracts or agreements that were in place or approved before July 1, 2009"; in Paragraph (8) of Subsection C, after "structures of", changed "executive" to "state"; in Paragraph (10) of Subsection C, at the end of the sentence, added "and is in compliance with the Procurement Code"; in Paragraph (11) of Subsection C, after "written recommendations", added "by November 14 of each year"; after "administration", added "and by November 21 of each year to"; and at the end of the sentence after "technology commission", added the remainder of the sentence; added Paragraphs (14) through (16) of Subsection C; in Subsection D, added the last sentence; added Subsection E; and in Subsection F, after "executive branch", added "and update it at least once every three years, which plan shall be available to agencies by July 31 of each year".

9-27-7. Information technology rate committee; membership; duties.

A. The "information technology rate committee" is created. The committee consists of seven members as follows:

(1) five members appointed by the governor from executive agencies that use information technology services and pay rates to an internal service fund;

(2) the secretary of finance and administration, who shall serve as chair of the committee; and

(3) the secretary of information technology.

B. The information technology rate committee shall:

(1) review the rate and fee schedule proposed by the secretary;

(2) ensure that the rate and fee schedule complies with the federal office of management and budget circular A-87 or its successor directive with respect to rates for expenditure of money from federal grant awards;

(3) consider for approval an equitable rate and fee schedule based on cost recovery for state agencies that use information technology services and pay rates to an internal service fund, with priority service to public safety agencies;

(4) present the committee's proposed rate and fee schedule by June 1 of each year to the office of the governor, the department of finance and administration and the legislative finance committee; and

(5) by July 15 of each year, implement a rate and fee schedule based on the committee's recommendations; provided, however, that a reduction in rates or fees by the department shall not require the committee's approval if the reduction is based on cost recovery and if the committee is notified timely.

History: Laws 2007, ch. 290, § 7; 2009, ch. 146, § 3; 2023, ch. 132, § 3.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified language related to the information technology rate committee's duties; and in Subsection B, Paragraph B(2), after "successor directive", added "with respect to rates for expenditures of money from federal grant awards".

The 2009 amendment, effective June 19, 2009, added Paragraph (2) of Subsection B; in Paragraph (3) of Subsection B, at the beginning of the sentence, deleted "purpose"

and added "consider for approval"; in Paragraph (4) of Subsection B, after "fee schedule", added "by June 1 of each year"; and in Paragraph (5) of Subsection B, after "committee's recommendations", deleted "and input from the office of the governor, the department of finance and administration and the legislative finance committee" and added the remainder of the sentence.

9-27-8. Organizational units of the department; powers and duties specified by law; access to information.

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, who shall retain the final decision-making authority and responsibility for the administration of any such laws. The department shall have access to all information technology records, data and information of other executive branch departments, agencies and institutions, including its own organizational units, not specifically held confidential by law.

History: Laws 2007, ch. 290, § 8.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 290, § 28 made the Department of Information Technology Act effective July 1, 2007.

9-27-9. Repealed.

History: Laws 2007, ch. 290, § 9; 2009, ch. 146, § 4; repealed by Laws 2017, ch. 45, § 1.

ANNOTATIONS

Repeals. — Laws 2017, ch. 45, § 1 repealed 9-27-9 NMSA 1978, as enacted by Laws 2007, ch. 290, § 9, relating to the information technology commission, creation, powers and duties, effective July 1, 2018. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

9-27-9.1. Termination of agency life; delayed repeal.

The information technology commission is terminated July 1, 2017 pursuant to the provisions of the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The commission shall continue to operate according to the provisions of the Department of Information Technology Act until July 1, 2018. Effective July 1, 2018, Section 9-27-9 NMSA 1978 (being Laws 2007, Chapter 290, Section 9, as amended) is repealed.

History: Laws 2017, ch. 45, § 1.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 45 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

9-27-10. Temporary provision; transfer of functions, personnel, property, contracts and references in law.

A. The transfer of functions, personnel, appropriations, money, records, equipment, supplies, other property and contractual obligations of the office of the chief information officer, the information technology commission, pursuant to the Information Technology Management Act, and the communications division, information systems division, radio communications bureau and telecommunications bureau of the general services department is approved and transferred to the department of information technology. All references in law to the office of the chief information officer, the information technology commission, pursuant to the Information Technology Management Act, and the communications division, information systems division, radio communications bureau and telecommunications bureau of the general services department shall be deemed to be references to the department of information technology.

B. It is the intent of the legislature that consolidation of state services and programs into the department of information technology be accomplished as quickly as practicable, without disruption in information technology services to executive agencies.

C. At the time of transfer of an agency or program, all personnel, money, appropriations, records, files, furniture, equipment and other property related to that agency or program shall be transferred to the department of information technology. The governor's office and the state budget division of the department of finance and administration shall assist in the identification of personnel, money, appropriations and property to be transferred and shall certify to the legislature that resources transferred from other agencies to the department of information technology are sufficient to continue the same level of services.

D. Contractual and other obligations of an agency or program shall be obligations of the department of information technology.

E. After the effective date of the transfers provided in Subsection B of this section, references in law to the programs being transferred shall be deemed to be references to the department of information technology.

F. The secretary of information technology shall provide periodic updates to the legislative finance committee and other appropriate interim legislative committees on the progress of the transition and integration plan and the establishment of the

department of information technology. By November 1, 2007, the secretary shall provide the legislative finance committee and other appropriate interim legislative committees with a comprehensive plan to provide information technology services for all executive branch agencies, including recommendations, if any, for the transfer of additional information technology services or programs from other agencies to the department of information technology.

History: Laws 2007, ch. 290, § 26.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 290, § 28 made the Department of Information Technology Act effective July 1, 2007.

9-27-11. Equipment replacement plans; equipment replacement revolving funds.

A. In order to plan for the expenditure of capital investments necessary to provide goods and services to the state and its agencies and to local public bodies and other enterprise customers, the department shall establish and maintain an equipment replacement plan for each of the department's enterprise functions. No later than September 1 of each year, the plans shall be submitted to the department of finance and administration and the legislature, accompanied by a reconciliation report of the preceding fiscal year reflecting financial activity in each of the equipment replacement revolving funds established pursuant to this section.

B. Upon the request of the secretary, the state treasurer shall establish in the state treasury such "equipment replacement revolving funds" as are necessary to administer each of the department's enterprise functions. The revolving funds shall consist of legislative appropriations to the funds and transfers made to the funds pursuant to Subsections C and D of this section. Income from investment of the revolving funds shall be credited back to the funds, and money in the funds shall not revert at the end of a fiscal year. Expenditures from the funds shall only be made pursuant to an appropriation from the legislature and only for the purpose of acquiring and replacing capital equipment and associated software used to provide enterprise services pursuant to the department's equipment replacement plans.

C. The department shall record amounts due to the equipment replacement revolving funds each fiscal year, based on the calculation of amortization and depreciation applicable to each enterprise service as reflected in the department's published cost structures for calculation of rates for services. Transfers to the funds shall be made from the operating funds of each enterprise in amounts that reconcile with the recorded amounts due. The recording of amounts due to the equipment replacement revolving funds and the transfer of the funds shall be consistent with generally accepted accounting principles.

D. The department may make initial transfers from its operating funds to establish the beginning fund balances as of July 1, 2008.

History: Laws 2008, ch. 84, § 2; 2009, ch. 146, § 5; 2017, ch. 45, § 3.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, in Subsection A, after "the department of finance and administration", deleted "the information technology commission".

The 2009 amendment, effective June 19, 2009, in Subsection A, in the second sentence, deleted "December 1" and added "September 1"; in Subsection B, in the last sentence, added "and associated software"; and in Subsection C, in the first sentence, added "amortization and".

9-27-12. Human resources; accounting and management reporting.

The department shall:

A. enter into a memorandum of understanding with the department of finance and administration for the joint design, development, acquisition and implementation of the statewide human resources, accounting and management reporting system or its successor system;

B. include a per employee assessment per agency that is sufficient to provide for the support, operation, maintenance, software upgrade or equipment replacement of the statewide human resources, accounting and management reporting system or its successor system; and

C. ensure that an amount equal to at least the annual depreciation and amortization be deposited in a separately identifiable account for software upgrades and equipment replacement.

History: Laws 2009, ch. 146, § 6.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 146 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

9-27-13. Telecommunications services.

A. The secretary of information technology may hire a communications engineer to oversee the engineering responsibilities of the department of information technology.

The communications engineer shall have a degree in either electrical engineering with an electrical communications specialty or in electronics engineering.

B. In providing telecommunications services pursuant to Chapter 15 NMSA 1978, the department of information technology shall not provide telecommunications services, including telephone, data and broadband services, to an entity other than those authorized pursuant to Section 15-5-1 NMSA 1978 [9-27-20 NMSA 1978], except as is necessary to facilitate a state-mandated program, including distance education, telehealth or school-based health center programs. Before expansion or upgrade of a state-owned or state-funded telecommunications network, whether voice, data or video transmission, the department shall prepare a plan consistent with state law and applicable rules that includes an assessment of how the project would potentially affect local telecommunications service providers and telecommunications service ratepayers.

History: 1953 Comp., § 4-26-1, enacted by Laws 1977, ch. 247, § 23; Laws 1978, ch. 124, § 3; 1980, ch. 151, § 9; 1983, ch. 301, § 39; 2007, ch. 290, § 13; 1978 Comp., § 15-2-1, recompiled as § 9-27-13 by Laws 2009, ch. 146, § 10.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 146, § 10 recompiled former 15-2-1 NMSA 1978 as 9-27-13 NMSA 1978, effective June 19, 2009.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2009, ch. 146, § 10 recompiled former 15-5-1 NMSA 1978 as 9-27-20 NMSA 1978, effective June 19, 2009.

The 2007 amendment, effective July 1, 2007, deleted former Subsection A; combined former Subsections B and C as new Subsection A; in Subsection A, after "secretary of", deleted "general services" and added "information technology". and after "responsibilities of the ", deleted "division" and added "department of information technology"; and added a new Subsection B.

9-27-14. Radio communications.

The department of information technology shall have supervisory control over all mobile or fixed radio equipment now owned or subsequently acquired by the executive branch or any state officer, department, other agency, board, commission, division or bureau of any executive state department or agency. This supervisory control shall include but not be limited to the determination of the need for, purchase, repair, maintenance, combination or disposition of radio equipment.

History: 1953 Comp., § 4-26-2, enacted by Laws 1977, ch. 247, § 24; 1978, ch. 124, § 4; 1980, ch. 151, § 10; 1983, ch. 301, § 40; 2007, ch. 290, § 14; 1978 Comp., § 15-2-2, recompiled as § 9-27-14 by Laws 2009, ch. 146, § 10.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 146, § 10 recompiled former 15-2-2 NMSA 1978 as 9-27-14 NMSA 1978, effective June 19, 2009.

9-27-15. Lease of radio communications network; conditions and requirements.

In exercising supervisory control pursuant to Section 9-27-14 NMSA 1978, the department may lease to a private entity excess capacity relating to the provision of two-way radio services on its radio communications property, including buildings, towers or antennas, provided that:

A. the lease is for an equivalent value exchange of money or property or services;

B. the secretary certifies that the excess capacity will be available for at least the duration of the lease;

C. if the lease exceeds ten years, the lease is first approved by the state board of finance;

D. the department has submitted to the legislative finance committee a detailed plan for the use of excess capacity being leased and an assessment of how the lease will affect public sector uses and local telecommunication service providers; and

E. income from the leases shall be deposited to the credit of the department and used to carry out the duties of the department.

History: 1978 Comp., § 15-2-2.1, enacted by Laws 1997, ch. 263, § 1; 2007, ch. 288, § 2; 2007, ch. 290, § 15; recompiled as § 9-27-15 by Laws 2009, ch. 146, § 10; 2023, ch. 132, § 4.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 146, § 10 recompiled former 15-2-2.1 NMSA 1978 as 9-27-15 NMSA 1978, effective June 19, 2009.

The 2023 amendment, effective July 1, 2023, removed a requirement that an agreement between the department of information technology and a private entity to lease excess capacity relating to the provision of two-way radio services on its radio communications property conform with the Procurement Code; deleted Subsection A and redesignated Subsections B through F as Subsections A through E, respectively; and in Subsection A, after "for an", deleted "equal" and added "equivalent", and after "property", added "or services".

2007 Amendments. — Laws 2007, ch. 290, § 15, effective July 1, 2007, authorized the department of information technology radio communications to lease a private excess capacity relating for two-way radio services.

Laws 2007, ch. 288, § 2, effective June 15, 2007, in Subsection E, added local telecommunication service providers to the plan.

9-27-16. Service charge.

A. The department of information technology shall charge a fee to the state or any officer, agency, department, division, board or commission of the state for any services rendered in the exercise of its supervisory control.

B. Fees shall be fixed by the secretary of information technology.

C. Income from fees collected shall be deposited to the credit of the department of information technology and used to carry out the duties of the department.

D. The department of information technology may provide two-way radio services to counties and municipalities at the same rates charged state agencies.

History: 1953 Comp., § 4-26-2.1, enacted by Laws 1970, ch. 71, § 1; 1975, ch. 214, § 1; 1977, ch. 247, § 25; 1978, ch. 124, § 5; 1980, ch. 151, § 11; 1983, ch. 301, § 41; 2007, ch. 290, § 16; 1978 Comp., § 15-2-3, recompiled as § 9-27-16 by Laws 2009, ch. 146, § 10.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 146, § 10 recompiled former 15-2-3 NMSA 1978 as 9-27-16 NMSA 1978, effective June 19, 2009.

9-27-17. Exclusion from jurisdiction.

The department of information technology shall not have supervisory control over:

A. the use of radio equipment, except as to the technical requirements of the equipment or unless the equipment is used by one or more agencies, and the department of information technology must determine priority of use;

B. the radio equipment of the department of military affairs, except the department of information technology may maintain all radio equipment owned by the department of military affairs that interfaces with state-owned radio equipment; or

C. unless otherwise directed by the secretary of information technology, radio equipment that is incidental to a system that is primarily a telephone system.

History: 1953 Comp., § 4-26-3, enacted by Laws 1966, ch. 32, § 3; 1971, ch. 115, § 1; 1977, ch. 247, § 26; 1978, ch. 124, § 6; 1980, ch. 151, § 12; 1983, ch. 301, § 42; 2007, ch. 290, § 17; 1978 Comp., § 15-2-4, recompiled as § 9-27-17 by Laws 2009, ch. 146, § 10.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 146, § 10 recompiled former 15-2-4 NMSA 1978 as 9-27-17 NMSA 1978, effective June 19, 2009.

9-27-18. Property transfer.

Ownership of all radio communication property at mountaintop or remote sites, including buildings, towers, antennas, emergency power plants and radio equipment owned by the New Mexico state police, department of transportation, department of game and fish and forestry division of the energy, minerals and natural resources department, is transferred to the department of information technology.

History: 1953 Comp., § 4-26-4, enacted by Laws 1971, ch. 115, § 2; 1977, ch. 247, § 27; 1978, ch. 124, § 7; 1980, ch. 151, § 13; 1983, ch. 301, § 43; 2007, ch. 290, § 18; 1978 Comp., § 15-2-5, recompiled as § 9-27-18 by Laws 2009, ch. 146, § 10.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 146, § 10 recompiled former 15-2-5 NMSA 1978 as 9-27-18 NMSA 1978, effective June 19, 2009.

9-27-19. Transfer of property; custody and control.

The radio equipment purchased in accordance with Laws 1972, Chapter 74 by the facilities management division of the general services department is transferred to the department of information technology. The department has the custody and control of the transferred radio equipment.

History: 1953 Comp., § 4-26-7, enacted by Laws 1975, ch. 214, § 4; 1977, ch. 247, § 29; 1978, ch. 124, § 10; 1980, ch. 151, § 15; 1983, ch. 301, § 44; 2007, ch. 290, § 19; 1978 Comp., § 15-2-8, recompiled as § 9-27-19 by Laws 2009, ch. 146, § 10; 2013, ch. 115, § 8.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 146, § 10 recompiled former 15-2-8 NMSA 1978 as 9-27-19 NMSA 1978, effective June 19, 2009.

The 2013 amendment, effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; and deleted "property control" and added "facilities management" before "division".

9-27-20. Telecommunications; duties.

A. The department shall enter into necessary agreements to provide, where feasible, a telecommunication network and related facilities to all executive, legislative and judicial branches and may, when capacity exists and it is economical, provide a telecommunication network and related facilities to educational institutions and other entities, with a preference to public entities.

B. The department may, in compliance with the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], establish price agreements with vendors for information technology goods and services. Any public body may directly procure goods or services offered under a department-placed price agreement other than a price agreement for an enterprise service administered by the department.

C. On July 1, 2023, and on July 1 of each subsequent year, the department shall provide a catalog listing the information technology goods and services it has available to offer with the approved rates.

D. Subject to capacity after meeting requirements of agency customers, the department may offer catalog goods and services to non-agency customers. The department may require a non-agency customer to comply with all rules and guidance applicable to the department-provided good or service but shall not require a non-agency customer to comply with any other law administered by the department unless otherwise provided by law.

History: Laws 1963, ch. 181, § 1; 1953 Comp., § 6-1-24; Laws 1965, ch. 225, § 1; 1977, ch. 247, § 61; 1978, ch. 124, § 11; 1980, ch. 151, § 17; 1983, ch. 301, § 57; 2007, ch. 288, § 3; 2007, ch. 290, § 20; 1978 Comp., § 15-5-1, recompiled as § 9-27-20 by Laws 2009, ch. 146, § 10; 2017, ch. 7, § 3; repealed and reenacted by Laws 2023, ch. 132, § 5.

ANNOTATIONS

Repeals and reenactments. — Laws 2023, ch. 132, § 5 repealed former 9-27-20 NMSA 1978 and enacted a new section, effective July 1, 2023.

Repeals. — Laws 2017, ch. 7, § 10, repealed Laws 2007, ch. 888 [288], § 3, effective June 16, 2017.

The 2017 amendment, effective June 16, 2017, required the department of information technology to enter into the necessary agreements to provide a telecommunication network to all executive, legislative and judicial branches, allowed the department to

provide a telecommunication network to educational institutions that request to be included in the network, required the department of information technology and the public education department to apply for federal reimbursements for telecommunication network services, and required the department of information technology to establish a rate structure and to charge participants in the telecommunication network according to that rate structure; after the heading, added the subsection designation "A" to the first paragraph of the section; in Subsection A, after "The department", deleted "of information technology", after "where feasible, a", deleted "central telephone system, including wide-area telephone service" and added "telecommunication network", after "the provision of a", deleted "central telephone system" and added "telecommunication network"; and added new Subsections B, C, and D.

The 2007 amendment, effective July 1, 2007, required the department of information technology to enter into agreements to provide a central telephone system for state governmental branches, except for political subdivisions of the state.

9-27-21. Central telecommunication network services; staff; budget.

The telecommunications bureau of the enterprise services division of the department shall provide the staff and material necessary to properly and adequately operate the central telecommunication network. The budget for the central telecommunication network shall be approved as part of the total operating budget of the department.

History: Laws 1963, ch. 181, § 2; 1953 Comp., § 6-1-25; Laws 1965, ch. 225, § 2; 1977, ch. 247, § 62; 1978, ch. 124, § 12; 1980, ch. 151, § 18; 1983, ch. 301, § 58; 1978 Comp., § 15-5-2, recompiled and amended as § 9-27-21 by Laws 2009, ch. 146, § 7; 2017, ch. 7, § 4.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 146, § 7 recompiled and amended former 15-5-2 NMSA 1978 as 9-27-21 NMSA 1978, effective June 19, 2009.

The 2017 amendment, effective June 16, 2017, required the telecommunications bureau of the enterprise services division of the department of information technology to provide the staff and material necessary to operate the central telecommunication network; in the catchline, deleted "telephone" and added "telecommunication network"; in the first sentence, after "adequately operate the central", deleted "telephone system" and added "telecommunication network"; and in the second sentence, after "budget for the central", deleted "telephone system" and added "telecommunication network".

The 2009 amendment, effective June 19, 2009, added "of the enterprise services division of the department" and after "operating budget of the", deleted "general services".

9-27-22. Charges for central telecommunication network services.

Departments, institutions and agencies participating in the central telecommunication network shall be charged a pro rata and equitable share of the total monthly costs of the service. This determination is to be made by the department. Toll calls not covered by the wide-area telephone service and supplemental equipment shall be segregated and paid for by agencies, institutions and departments making the calls or using the supplemental equipment.

History: 1953 Comp., § 6-1-26, enacted by Laws 1963, ch. 181, § 3; 1965, ch. 225, § 3; 1977, ch. 247, § 63; 1978, ch. 124, § 13; 1980, ch. 151, § 19; 1983, ch. 301, § 59; 2007, ch. 290, § 21; 1978 Comp., § 15-5-3, recompiled as § 9-27-22 by Laws 2009, ch. 146, § 10; 2017, ch. 7, § 5.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 146, § 10 recompiled former 15-5-3 NMSA 1978 as 9-27-22 NMSA 1978, effective June 19, 2009.

The 2017 amendment, effective June 16, 2017, replaced "telephone system" with "telecommunication network" in the provision for charges for participating in the central telecommunication network; in the catchline, after "central", deleted "telephone" and added "telecommunication network"; in the first sentence, after "participating in the central", deleted "telephone system" and added "telecommunication network"; and in the second sentence, after "by the department", deleted "of information technology".

9-27-23. Deposit of money.

The department shall order the deposit or transfer monthly to a fund known as the "central telecommunication network fund" the amount of money owed by each department, institution and agency utilizing the central telecommunication network. State institutions and agencies shall adopt such accounting procedures as are prescribed by the department of finance and administration for the handling of payments with reference to the central telecommunication network.

History: 1953 Comp., § 6-1-27, enacted by Laws 1963, ch. 181, § 4; 1965, ch. 225, § 4; 1977, ch. 247, § 64; 1978, ch. 124, § 14; 1980, ch. 151, § 20; 1983, ch. 301, § 60; 2007, ch. 290, § 22; 1978 Comp., § 15-5-4, recompiled as § 9-27-23 by Laws 2009, ch. 146, § 10; 2017, ch. 7, § 6.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 146, § 10 recompiled former 15-5-4 NMSA 1978 as 9-27-23 NMSA 1978, effective June 19, 2009.

The 2017 amendment, effective June 16, 2017, required the department of information technology to deposit the money that is owed by each department, institution and agency participating in the telecommunication network into the telecommunication

network fund; after "The department", deleted "of information technology", after "known as the ‘central’", deleted "telephone services" and added "telecommunication network", after "utilizing the central", deleted "telephone system" and added "telecommunication network", and after "reference to the central", deleted "telephone system" and added "telecommunication network".

9-27-24. Appropriation.

All income to the central telecommunication network fund is appropriated to carry out the purposes of Sections 9-27-20 through 9-27-25 NMSA 1978 or their successor recompiled sections. Payments from the central telecommunication network fund shall be made on vouchers signed by the secretary or the secretary's designee.

History: 1953 Comp., § 6-1-28, enacted by Laws 1963, ch. 181, § 5; 1965, ch. 225, § 5; 1977, ch. 247, § 65; 1978, ch. 124, § 15; 1983, ch. 301, § 61; 1978 Comp., § 15-5-5, recompiled and amended as § 9-27-24 by Laws 2009, ch. 146, § 8; 2017, ch. 7, § 7.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 146, § 8 recompiled and amended former 15-5-5 NMSA 1978 as 9-27-24 NMSA 1978, effective June 19, 2009.

The 2017 amendment, effective June 16, 2017, provided that all income to the central telecommunication network be appropriated to carry out the purposes of the central telecommunication network; after "to the central", deleted "telephone services" and added "telecommunication network", after "Sections", deleted "15-5-1 through 15-5-6" and added "9-27-20 through 9-27-25", and after "from the central", deleted "telephone services" and added "telecommunication network".

The 2009 amendment, effective June 19, 2009, added "or their successor recompiled sections".

9-27-25. Participation or exclusion of agency, department or institution.

All departments, institutions and agencies of the state government to the extent that it is practical and feasible shall participate in the central telecommunication network. No agreement for any leased or purchased telephone service or for purchase of any telephone equipment shall be entered into by any department, institution or agency of the state participating in the central telecommunication network, except those institutions enumerated in Article 12, Section 11 of the constitution of New Mexico, except upon prior written approval of the secretary or the secretary's designee. If, on the basis of a technical survey, it is found to be infeasible or impractical to include particular agencies, departments or institutions in the central telecommunication network, the secretary or the secretary's designee may exclude them. In the event of exclusion of

any agency, department or institution, the secretary or the secretary's designee shall file a written statement, certifying the reasons therefor, with the state records center.

History: 1953 Comp., § 6-1-29, enacted by Laws 1963, ch. 181, § 6; 1965, ch. 225, § 6; 1973, ch. 79, § 1; 1977, ch. 247, § 66; 1978, ch. 124, § 16; 1980, ch. 151, § 21; 1983, ch. 301, § 62; 1978 Comp., § 15-5-6, recompiled and amended as § 9-27-25 by Laws 2009, ch. 146, § 9; 2017, ch. 7, § 8.

ANNOTATIONS

Recompilations. — Laws 2009, ch. 146, § 9 recompiled and amended former 15-5-6 NMSA 1978 as 9-27-25 NMSA 1978, effective June 19, 2009.

The 2017 amendment, effective June 16, 2017, provided that every department, institution or agency of the state government shall participate in the central telecommunication network unless excluded by the secretary of information technology or the secretary’s designee; and substituted "telecommunication network" for "telephone system" throughout the section.

The 2009 amendment, effective June 19, 2009, in the second sentence, deleted "director of the communications division" and added "secretary or the secretary’s designee"; and in the last sentence, deleted "director of the communications division” and added “secretary or the secretary’s designee".

9-27-26. Indian nations, tribes and pueblos; agency-owned or -operated broadband network; statewide broadband; right-of-way agreement and service agreement.

Indian nations, tribes and pueblos may connect to an agency-owned or -operated statewide broadband network in exchange for a mutually agreed upon right-of-way agreement or a service agreement with the chief information officer. The chief information officer shall apply for reimbursements from the federal universal service fund pursuant to Section 254 of the federal Telecommunications Act of 1996, 47 U.S.C. 254, as such section existed on January 1, 2006, on behalf of Indian nations, tribes and pueblos that execute a right-of-way agreement or service agreement.

History: Laws 2017, ch. 7, § 9; 2023, ch. 132, § 6.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, authorized service agreements between Indian nations, tribes and pueblos and the chief information officer for connections to an agency-owned or operated statewide broadband network; in the section heading, added "agency-owned or -operated broadband network", and added "agreement and service"; and added "agency-owned or -operated", preceding "statewide broadband network",

after "exchange for a", added "mutually agreed upon", and after each occurrence of "right-of-way agreement", added "or service agreement".

9-27-27. Library broadband infrastructure fund; created.

A. The "library broadband infrastructure fund" is created in the state treasury. The fund consists of money appropriated by the legislature, federal money granted to the state for the purposes of the fund, income from investment of the fund and money otherwise accruing to the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The department of information technology shall administer the fund, and money in the fund is subject to appropriation by the legislature to the department of information technology to provide:

(1) matching money for grants to bring broadband infrastructure to public, tribal and school libraries;

(2) support for grant application preparation and compliance; and

(3) planning and data acquisition services to support collaborative project implementation.

B. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of information technology or the secretary's authorized representative.

History: Laws 2018, ch. 25, § 1.

ANNOTATIONS

Effective dates. — Laws 2018, ch. 25 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2018, 90 days after the adjournment of the legislature.

ARTICLE 27A
Cybersecurity

9-27A-1. Short title.

This act [9-27A-1 to 9-27A-5 NMSA 1978] may be cited as the "Cybersecurity Act".

History: Laws 2023, ch. 115, § 1.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 115, § 7 made Laws 2023, ch. 115, § 1 effective July 1, 2023.

Temporary provisions. — Laws 2023, ch. 115, § 6 provided that on July 1, 2023:

A. all functions, personnel, money, appropriations, records, furniture, equipment, supplies and other property pertaining to cybersecurity or information security of the department of information technology are transferred to the cybersecurity office;

B. all contractual obligations of the department of information technology for cybersecurity or information security services are binding on the cybersecurity office;

C. all references in law to the chief information security officer of the department of information technology shall be deemed to be references to the state chief information security officer; and

D. the chief information security officer for the department of information technology shall become the initial state chief information security officer.

9-27A-2. Definitions.

As used in the Cybersecurity Act:

A. "agency" means executive cabinet agencies and their administratively attached agencies, offices, boards and commissions;

B. "cybersecurity" means acts, practices or systems that eliminate or reduce the risk of loss of critical assets, loss of sensitive information or reputational harm as a result of a cyber attack or breach within an organization's network;

C. "information security" means acts, practices or systems that eliminate or reduce the risk that legally protected information or information that could be used to facilitate criminal activity is accessed or compromised through physical or electronic means;

D. "information technology" means computer hardware, storage media, networking equipment, physical devices, infrastructure, processes and code, firmware, software and ancillary products and services, including:

(1) systems design and analysis;

(2) development or modification of hardware or solutions used to create, process, store, secure or exchange electronic data;

(3) information storage and retrieval;

(4) voice, radio, video and data communications;

(5) network, hosting and cloud-based systems;

(6) simulation and testing;

(7) interactions between a user and an information system; and

(8) user and system credentials; and

E. "security officer" means the state chief information security officer.

History: Laws 2023, ch. 115, § 2.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 115, § 7 made Laws 2023, ch. 115, § 2 effective July 1, 2023.

9-27A-3. Cybersecurity office created; security officer; duties and powers.

A. The "cybersecurity office" is created and is administratively attached to the department of information technology. The office shall be managed by the security officer.

B. Except as required by federal law, the cybersecurity office shall oversee, in a fiscally responsible manner, cybersecurity- and information security-related functions for agencies and may:

(1) adopt and implement rules establishing minimum security standards and policies to protect agency information technology systems and infrastructure and provide appropriate governance and application of the standards and policies across information technology resources used by agencies to promote the availability, security and integrity of the information processed, transacted or stored by agencies in the state's information technology infrastructure and systems;

(2) develop minimum cybersecurity controls for managing and protecting information technology assets and infrastructure for all entities that are connected to an agency-operated or -owned telecommunications network;

(3) consistent with information security standards, monitor agency information technology networks to detect security incidents and support mitigation efforts as necessary and within capabilities;

(4) as reasonably necessary to perform its monitoring and detection duties, obtain agency system event logs to support monitoring and detection pursuant to Paragraph (3) of this subsection;

(5) in coordination with state and federal cybersecurity emergency management agencies as appropriate, create a model incident-response plan for public bodies to adopt with the cybersecurity office as the incident-response coordinator for incidents that:

(a) impact multiple public bodies;

(b) impact more than ten thousand residents of the state;

(c) involve a nation-state actor; or

(d) involve the marketing or transfer of confidential data derived from a breach of cybersecurity;

(6) serve as a cybersecurity resource for local governments;

(7) develop a service catalog of cybersecurity services to be offered to agencies and to political subdivisions of the state;

(8) collaborate with agencies in developing standards, functions and services in order to ensure the agency regulatory environments are understood and considered as part of a cybersecurity incident response;

(9) establish core services to support minimum security standards and policies;

(10) establish minimum data classification policies and standards and design controls to support compliance with classifications and report on exceptions;

(11) develop and issue cybersecurity awareness policies and training standards and develop and offer cybersecurity training services; and

(12) establish a centralized cybersecurity and data breach reporting process for agencies and political subdivisions of the state.

History: Laws 2023, ch. 115, § 3.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 115, § 7 made Laws 2023, ch. 115, § 3 effective July 1, 2023.

Temporary provisions. — Laws 2023, ch. 115, § 6 provided that on July 1, 2023:

A. all functions, personnel, money, appropriations, records, furniture, equipment, supplies and other property pertaining to cybersecurity or information security of the department of information technology are transferred to the cybersecurity office;

B. all contractual obligations of the department of information technology for cybersecurity or information security services are binding on the cybersecurity office;

C. all references in law to the chief information security officer of the department of information technology shall be deemed to be references to the state chief information security officer; and

D. the chief information security officer for the department of information technology shall become the initial state chief information security officer.

9-27A-4. State chief information security officer; qualifications.

The position of "state chief information security officer" is created. The security officer shall be a classified position in accordance with rules promulgated pursuant to the Personnel Act [Chapter 10, Article 9 NMSA 1978].

History: Laws 2023, ch. 115, § 4.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 115, § 7 made Laws 2023, ch. 115, § 4 effective July 1, 2023.

Temporary provisions. — Laws 2023, ch. 115, § 6 provided that on July 1, 2023:

A. all functions, personnel, money, appropriations, records, furniture, equipment, supplies and other property pertaining to cybersecurity or information security of the department of information technology are transferred to the cybersecurity office;

B. all contractual obligations of the department of information technology for cybersecurity or information security services are binding on the cybersecurity office;

C. all references in law to the chief information security officer of the department of information technology shall be deemed to be references to the state chief information security officer; and

D. the chief information security officer for the department of information technology shall become the initial state chief information security officer.

9-27A-5. Cybersecurity advisory committee created; membership; duties.

A. The "cybersecurity advisory committee" is created within the cybersecurity office and shall:

(1) assist the office in the development of:

(a) a statewide cybersecurity plan;

(b) guidelines for best cybersecurity practices for agencies; and

(c) recommendations on how to respond to a specific cybersecurity threat or attack; and

(2) have authority over the hiring, supervision, discipline and compensation of the security officer.

B. The security officer or the security officer's designee shall chair and be an advisory nonvoting member of the cybersecurity advisory committee; provided that the security officer shall be recused from deliberations concerning supervision, discipline or compensation of the security officer and the secretary of information technology shall chair those deliberations. The remaining members consist of:

(1) the secretary of information technology or the secretary's designee;

(2) the principal information technology staff person for the administrative office of the courts or the director's designee;

(3) the director of the legislative council service or the director's designee;

(4) one member appointed by the secretary of Indian affairs, who is experienced with cybersecurity issues;

(5) three members appointed by the chair of the board of directors of the New Mexico association of counties who represent county governmental agencies and who are experienced with cybersecurity issues; provided that at least one member shall represent a county other than a class A or H class county;

(6) three members appointed by the chair of the board of directors of the New Mexico municipal league who represent municipal governmental agencies and who are experienced with cybersecurity issues; provided that only one member may represent a home rule municipality; and

(7) three members appointed by the governor who may represent separate agencies other than the department of information technology and are experienced with cybersecurity issues.

C. The cybersecurity advisory committee may invite representatives of unrepresented county, municipal or tribal agencies or other public entities to participate as advisory members of the committee as it determines that their participation would be useful to the deliberations of the committee.

D. A meeting of and material presented to or generated by the cybersecurity advisory committee are subject to the Open Meetings Act and the Inspection of Public Records Act subject to an exception for a meeting or material concerning information that could, if made public, expose a vulnerability in:

(1) an information system owned or operated by a public entity; or

(2) a cybersecurity solution implemented by a public entity.

E. Pursuant to the Cybersecurity Act or other statutory authority, the security officer may issue orders regarding the compliance of agencies with guidelines or recommendations of the cybersecurity advisory committee; however, compliance with those guidelines or recommendations by non-executive agencies or county, municipal or tribal governments shall be strictly voluntary.

F. The cybersecurity advisory committee shall hold its first meeting on or before August 16, 2023 and shall meet every two months at minimum after that; provided that the security officer shall have the discretion to call for more frequent meetings as circumstances warrant. At the discretion of the security officer, the committee may issue advisory reports regarding cybersecurity issues.

G. The cybersecurity advisory committee shall present a report to the legislative finance committee and the appropriate legislative interim committee concerned with information technology at those committees' November 2023 meetings and to the governor by November 30, 2023 regarding the status of cybersecurity preparedness within agencies and elsewhere in the state. On or before October 30, 2024 and on or before October 30 of each subsequent year, the cybersecurity office shall present updated reports to the legislative committees and the governor. The reports to legislative committees shall be in executive session, and any materials connected with the report presentations are exempt from the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

H. The members of the cybersecurity advisory committee shall receive no pay for their services as members of the committee, but shall be allowed per diem and mileage pursuant to the provisions of the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978]. All per diem and contingent expenses incurred by the cybersecurity office shall be paid upon warrants of the secretary of finance and administration, supported by vouchers of the security officer.

History: Laws 2023, ch. 115, § 5.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 115, § 7 made Laws 2023, ch. 115, § 5 effective July 1, 2023.

Temporary provisions. — Laws 2023, ch. 115, § 6 provided that on July 1, 2023:

A. all functions, personnel, money, appropriations, records, furniture, equipment, supplies and other property pertaining to cybersecurity or information security of the department of information technology are transferred to the cybersecurity office;

B. all contractual obligations of the department of information technology for cybersecurity or information security services are binding on the cybersecurity office;

C. all references in law to the chief information security officer of the department of information technology shall be deemed to be references to the state chief information security officer; and

D. the chief information security officer for the department of information technology shall become the initial state chief information security officer.

ARTICLE 28
Homeland Security and Emergency Management Department

9-28-1. Short title.

Sections 1 through 6 [9-28-1 to 9-28-6 NMSA 1978] of this act may be cited as the "Homeland Security and Emergency Management Department Act".

History: Laws 2007, ch. 291, § 1.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 291, § 37 made the Homeland Security and Emergency Management Department Act effective July 1, 2007.

9-28-2. Purpose; criminal justice law enforcement agency.

A. The purpose of the Homeland Security and Emergency Management Department Act is to establish a department to:

(1) consolidate and coordinate homeland security and emergency management functions to provide comprehensive and coordinated preparedness,

mitigation, prevention, protection, response and recovery for emergencies and disasters, regardless of cause, and acts or threats of terrorism;

(2) act as the central primary coordinating agency for the state and its political subdivisions in response to emergencies, disasters and acts or threats of terrorism; and

(3) act as the conduit for federal assistance and cooperation in response to emergencies, disasters and acts or threats of terrorism.

B. The department shall be considered a criminal justice law enforcement agency in order to accomplish the purposes provided in Subsection A of this section.

History: Laws 2007, ch. 291, § 2; 2009, ch. 250, § 2.

ANNOTATIONS

The 2009 amendment, effective April 7, 2009, in Paragraphs (1) through (3) of Subsection A, after "acts", added "or threats"; and added Subsection B.

9-28-3. Definitions.

As used in the Homeland Security and Emergency Management Department Act:

A. "department" means the homeland security and emergency management department; and

B. "secretary" means the secretary of homeland security and emergency management.

History: Laws 2007, ch. 291, § 3; 2009, ch. 250, § 3.

ANNOTATIONS

The 2009 amendment, effective April 7, 2009, in Subsection B, changed "state director" to "secretary".

9-28-4. Homeland security and emergency management department; created; powers and duties.

A. The "homeland security and emergency management department" is created in the executive branch. The department is a cabinet department. The chief administrative and executive officer of the department is the "secretary of homeland security and emergency management", who shall be appointed by the governor with the consent of the senate and hold office at the pleasure of the governor.

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

C. To perform the secretary's 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 Homeland Security and Emergency Management Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and rules;

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

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

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

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to ensure implementation of and compliance with the provisions of law for whose administration or execution the secretary 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 residents 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; and

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978]. Persons appointed to these positions shall serve at the pleasure of the secretary.

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

E. The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions. No rule 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 rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, 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 rule, proposed amendment or repeal of an existing rule 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 shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: Laws 2007, ch. 291, § 4; 2009, ch. 250, § 4.

ANNOTATIONS

The 2009 amendment, effective April 7, 2009, changed "state director" to "secretary"; in Subsection A, in the second sentence, after "The department is", deleted "not"; and after "appointed by the governor", added "with the consent of the senate".

9-28-5. Department duties.

The department shall:

A. coordinate the homeland security and emergency management efforts of all state and local government agencies, as well as enlist cooperation from private entities such as health care providers;

B. apply for and accept federal funds for homeland security, administer the funds and develop criteria to allocate grants to local governments, tribes, state agencies and other qualified entities;

C. act as liaison between federal, state and local agencies to effect the improved sharing of counterterrorism intelligence;

D. provide information to the general public and to private businesses that is essential to ensuring their safety and security and provide the governor with timely information relating to emergencies, disasters and acts of terrorism or terrorist threats;

E. establish security standards for state facilities and for protection of their occupants and develop plans for the continuity of state government operations in the event of a threat or act of terrorism or other natural or man-made disaster;

F. identify the state's critical infrastructures and assist public and private entities with developing plans and procedures designed to implement the protective actions necessary to continue operations;

G. coordinate state agency and local government plans for prevention, preparedness and response with a focus on an all-hazards approach;

H. coordinate law enforcement counterterrorism prevention, preparedness and response training on a statewide basis, including training for emergency responders, government officials, health care providers and others as appropriate;

I. work with emergency response and emergency management programs and provide assistance in developing and conducting terrorism response exercises for emergency responders, government officials, health care providers and others;

J. coordinate law enforcement's and emergency responders' response to an act of terrorism or terrorist threat;

K. develop and maintain a statewide plan and strategy to manage and allocate federal grant funds required to provide the state's emergency response community with the equipment necessary to respond to an act of terrorism involving a weapon of mass destruction; and

L. perform such other duties relating to homeland security as may be assigned by the governor.

History: Laws 2007, ch. 291, § 5.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 291, § 37 made the Homeland Security and Emergency Management Department Act effective July 1, 2007.

9-28-6. Cooperation with federal government; authority of secretary; single state agency status.

A. The department is authorized to cooperate with the federal government in the administration of homeland security and emergency management programs in which financial or other participation by the federal government is authorized or mandated under state or federal laws, rules or orders. The department may enter into agreements with agencies of the federal government to implement homeland security and emergency management 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 may by appropriate order designate the department as the single state agency for the administration of any homeland security or emergency management program when that designation is a condition of federal financial or other participation in the program under applicable federal law, rule or order. Whether or not a federal condition exists, the governor may designate the department as the single state agency for the administration of any homeland security or emergency management program. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

History: Laws 2007, ch. 291, § 6; 2009, ch. 250, § 5.

ANNOTATIONS

The 2009 amendment, effective April 7, 2009, in the title, changed "state director" to "secretary".

9-28-7. Temporary provision; transfer of personnel and property; contractual obligations; statutory references.

A. On the effective date of this act, all functions, personnel, money, appropriations, records, furniture, equipment and other property of the office of homeland security or the homeland security advisor of the governor's office are transferred to the homeland security and emergency management department.

B. On the effective date of this act, all functions, personnel, money, appropriations, records, furniture, equipment and other property of the office of emergency management and the homeland security and emergency management program of the department of public safety are transferred to the homeland security and emergency management department.

C. On the effective date of this act, contractual obligations of the office of homeland security or the homeland security advisor of the governor's office or of the technical and emergency support division of the department of public safety or the department of public safety pertaining to the homeland security and emergency management program shall be binding on the homeland security and emergency management department.

D. On the effective date of this act, all references in the law to the office of homeland security or the homeland security advisor of the governor's office shall be deemed to be references to the homeland security and emergency management department.

E. On the effective date of this act, references in law to the State Civil Emergency Preparedness Act shall be deemed to be references to the All Hazard Emergency Management Act [12-10-1 to 12-10-10 NMSA 1978]. All references in law to the Emergency Management Act shall be deemed to be references to the Hazardous Materials Emergency Response Act [12-12-17 to 12-12-30 NMSA 1978].

History: Laws 2007, ch. 291, § 35.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 291, § 37 made this section effective July 1, 2007.

ARTICLE 29
Early Childhood Education and Care Department

9-29-1. Short title.

Chapter 9, Article 29 NMSA 1978 may be cited as the "Early Childhood Education and Care Department Act".

History: Laws 2019, ch. 48, § 1; 2022, ch. 30, § 2.

ANNOTATIONS

The 2022 amendment, effective July 1, 2022, changed "Sections 1 through 12 of this act" to "Chapter 9, Article 29 NMSA 1978".

Temporary provisions. — Laws 2019, ch. 48, § 34 provided:

A. On July 1, 2020, all programs, functions, personnel, appropriations, money, statutory funds, records, furniture, equipment, supplies and other property belonging to the following are transferred to the early childhood education and care department, and all contractual obligations of the following are binding on the early childhood education and care department:

(1) the children, youth and families department's early childhood services division; and

(2) the department of health's:

(a) family, infant, toddler program; and

(b) family first home visiting.

B. Beginning on July 1, 2020, all contractual obligations pertaining to the programs, services and entities in Subsection A of this section are binding on the early childhood education and care department.

C. Beginning on July 1, 2020, all references in law, rules, orders and other official acts to the programs, services and entities in Subsection A of this section shall be deemed references to the early childhood education and care department.

Laws 2019, ch. 48, § 35 provided:

A. After July 1, 2019, the governor may appoint the secretary-designate of early childhood education and care and may allow the secretary-designate to appoint division directors to assist with the transition. The governor shall convene a working group made up of the secretaries of finance and administration, early childhood education and care, children, youth and families and health to plan for the orderly transition of programs and personnel to the early childhood education and care department. The secretaries shall assign staff as necessary to assist the transition. All state agencies shall assist the working group as requested. The following state agencies shall provide the following services:

(1) the general services department shall assist in locating the early childhood education and care department in a state building or an appropriate leased facility;

(2) the department of finance and administration shall set up the administrative services division of the early childhood education and care department and ensure the orderly transition of administrative systems from the children, youth and families department and the department of health to the early childhood education and care department; and

(3) the department of information technology shall set up administrative, programmatic, data and other required systems and ensure the orderly transfer of pertinent data from the children, youth and families department and the department of health to the early childhood education and care department and shall ensure the compatibility of the three systems.

B. Between July 1, 2019 and July 1, 2020, the accounts and financial control functions that will belong to the early childhood education and care department shall

continue being performed by the administrative services divisions of the children, youth and families department, the public education department, the human services department [health care authority department] and the department of health, as appropriate; provided, however, that the administrative services divisions of the children, youth and families department and the department of health shall provide for separate reporting of accounts and finances between the early childhood education and care department and the children, youth and families department and the department of health and shall provide necessary administrative services related to the early childhood education and care department at the direction of the secretary of early childhood education and care.

9-29-2. Definitions.

As used in the Early Childhood Education and Care Department Act:

A. "child" means a person from birth to age five or, where the context otherwise provides, to age eight or thirteen;

B. "child care home program" means the program developed by the department to license or register homes or residences to provide child care services to children, including those defined in Section 32A-23C-2 NMSA 1978. A home may be registered or licensed pursuant to the Early Childhood Education and Care Act and through department rules;

C. "department" means the early childhood education and care department;

D. "department-contracted providers" means individuals or entities that enter into contracts with the department to provide child care services, federal Individuals with Disabilities Education Act, Part C, early intervention services, home visiting services or pre-kindergarten services or those under contract with the department that have access to child and family personal and confidential information;

E. "licensed child care center" means a nonresidential facility that meets the applicable state and local building and safety codes and provides care and services to and supervision of children for less than twenty-four hours of any day;

F. "licensed child care facility" means a licensed child care center, licensed group child care home, licensed family child care home or licensed out-of-school time program;

G. "licensed family child care home" means a private dwelling in which the licensee resides and is the primary educator that provides care and services to and supervision of children as part of the child care home program for a period of less than twenty-four hours of any day for no more than six children;

H. "licensed group child care home" means a home in which the licensee resides and is the primary educator that provides care and services to and supervision of children as part of the child care home program for at least seven but no more than twelve children;

I. "licensed out-of-school time program" means a school-age person program at a specific site, usually a school or community center, offering on a consistent basis a variety of developmentally appropriate activities that are both educational and recreational;

J. "registered child care home" or "registration" means an independent primary caregiver who has registered the independent primary caregiver's home or residence with the department to provide care and services to and supervision of children as part of the child care home program for a period of less than twenty-four hours of any day for no more than four children. A registered child care home may participate in the child and adult care food program or participate in the child care assistance program; and

K. "secretary" means the secretary of early childhood education and care.

History: Laws 2019, ch. 48, § 2; 2023, ch. 75, § 1.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, defined "child care home program," "department-contracted providers," "licensed child care center," "licensed child care facility," "licensed family child care home," "licensed group child care home," "licensed out-of-school time program," and "registered child care home"; added a new Subsection B and redesignated former Subsection B as Subsection C; and added Subsections D through J and redesignated former Subsection C as Subsection K.

9-29-3. Department created; organizational units.

A. The "early childhood education and care department" is created as a cabinet department and consists of the:

(1) administrative services division;

(2) office of the secretary;

(3) child care licensing and services division;

(4) early childhood education division; and

(5) early intervention services division, which consists of the:

(a) home visitation bureau; and

(b) family, infant, toddler program.

B. The office of the secretary shall include an assistant secretary for Native American early childhood education and care who will be advised by the Indian education advisory council created pursuant to Section 22-23A-6 NMSA 1978.

History: Laws 2019, ch. 48, § 3.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 48, § 38 made Laws 2019, ch. 48, § 3 effective July 1, 2019.

Temporary provisions. — Laws 2019, ch. 48, § 34 provided:

A. On July 1, 2020, all programs, functions, personnel, appropriations, money, statutory funds, records, furniture, equipment, supplies and other property belonging to the following are transferred to the early childhood education and care department, and all contractual obligations of the following are binding on the early childhood education and care department:

(1) the children, youth and families department's early childhood services division; and

(2) the department of health's:

(a) family, infant, toddler program; and

(b) family first home visiting.

B. Beginning on July 1, 2020, all contractual obligations pertaining to the programs, services and entities in Subsection A of this section are binding on the early childhood education and care department.

C. Beginning on July 1, 2020, all references in law, rules, orders and other official acts to the programs, services and entities in Subsection A of this section shall be deemed references to the early childhood education and care department.

Laws 2019, ch. 48, § 35 provided:

A. After July 1, 2019, the governor may appoint the secretary-designate of early childhood education and care and may allow the secretary-designate to appoint division directors to assist with the transition. The governor shall convene a working group made up of the secretaries of finance and administration, early childhood education and care, children, youth and families and health to plan for the orderly transition of programs and personnel to the early childhood education and care department. The

secretaries shall assign staff as necessary to assist the transition. All state agencies shall assist the working group as requested. The following state agencies shall provide the following services:

(1) the general services department shall assist in locating the early childhood education and care department in a state building or an appropriate leased facility;

(2) the department of finance and administration shall set up the administrative services division of the early childhood education and care department and ensure the orderly transition of administrative systems from the children, youth and families department and the department of health to the early childhood education and care department; and

(3) the department of information technology shall set up administrative, programmatic, data and other required systems and ensure the orderly transfer of pertinent data from the children, youth and families department and the department of health to the early childhood education and care department and shall ensure the compatibility of the three systems.

B. Between July 1, 2019 and July 1, 2020, the accounts and financial control functions that will belong to the early childhood education and care department shall continue being performed by the administrative services divisions of the children, youth and families department, the public education department, the human services department [health care authority department] and the department of health, as appropriate; provided, however, that the administrative services divisions of the children, youth and families department and the department of health shall provide for separate reporting of accounts and finances between the early childhood education and care department and the children, youth and families department and the department of health and shall provide necessary administrative services related to the early childhood education and care department at the direction of the secretary of early childhood education and care.

9-29-4. Secretary; appointment.

The chief executive and administrative officer of the department is the "secretary of early childhood education and care". The governor, with the advice and consent of the senate, shall appoint a person who has experience in early childhood education or care programs to serve as secretary. The secretary shall serve in and have the duties, responsibilities and authority of that position during the period before final action by the senate confirming or rejecting the secretary's appointment. The secretary shall serve in the executive cabinet and shall serve in the role of secretary at the pleasure of the governor.

History: Laws 2019, ch. 48, § 4.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 48, § 38 made Laws 2019, ch. 48, § 4 effective July 1, 2019.

Temporary provisions. — Laws 2019, ch. 48, § 35 provided:

A. After July 1, 2019, the governor may appoint the secretary-designate of early childhood education and care and may allow the secretary-designate to appoint division directors to assist with the transition. The governor shall convene a working group made up of the secretaries of finance and administration, early childhood education and care, children, youth and families and health to plan for the orderly transition of programs and personnel to the early childhood education and care department. The secretaries shall assign staff as necessary to assist the transition. All state agencies shall assist the working group as requested. The following state agencies shall provide the following services:

(1) the general services department shall assist in locating the early childhood education and care department in a state building or an appropriate leased facility;

(2) the department of finance and administration shall set up the administrative services division of the early childhood education and care department and ensure the orderly transition of administrative systems from the children, youth and families department and the department of health to the early childhood education and care department; and

(3) the department of information technology shall set up administrative, programmatic, data and other required systems and ensure the orderly transfer of pertinent data from the children, youth and families department and the department of health to the early childhood education and care department and shall ensure the compatibility of the three systems.

B. Between July 1, 2019 and July 1, 2020, the accounts and financial control functions that will belong to the early childhood education and care department shall continue being performed by the administrative services divisions of the children, youth and families department, the public education department, the human services department [health care authority department] and the department of health, as appropriate; provided, however, that the administrative services divisions of the children, youth and families department and the department of health shall provide for separate reporting of accounts and finances between the early childhood education and care department and the children, youth and families department and the department of health and shall provide necessary administrative services related to the early childhood education and care department at the direction of the secretary of early childhood education and care.

9-29-5. Department reorganization and organizational unit creation.

A. The secretary may reorganize the department. If the secretary does so, the secretary shall report on the reorganization to the legislature.

B. The secretary shall, with the approval of the governor, appoint directors of the department's divisions.

C. The secretary may establish within each of the department's divisions additional bureaus as necessary to implement the Early Childhood Education and Care Department Act. The secretary shall appoint chiefs to serve as the administrative heads of the department's bureaus.

History: Laws 2019, ch. 48, § 5.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 48, § 38 made Laws 2019, ch. 48, § 5 effective July 1, 2019.

Temporary provisions. — Laws 2019, ch. 48, § 35 provided:

A. After July 1, 2019, the governor may appoint the secretary-designate of early childhood education and care and may allow the secretary-designate to appoint division directors to assist with the transition. The governor shall convene a working group made up of the secretaries of finance and administration, early childhood education and care, children, youth and families and health to plan for the orderly transition of programs and personnel to the early childhood education and care department. The secretaries shall assign staff as necessary to assist the transition. All state agencies shall assist the working group as requested. The following state agencies shall provide the following services:

(1) the general services department shall assist in locating the early childhood education and care department in a state building or an appropriate leased facility;

(2) the department of finance and administration shall set up the administrative services division of the early childhood education and care department and ensure the orderly transition of administrative systems from the children, youth and families department and the department of health to the early childhood education and care department; and

(3) the department of information technology shall set up administrative, programmatic, data and other required systems and ensure the orderly transfer of pertinent data from the children, youth and families department and the department of health to the early childhood education and care department and shall ensure the compatibility of the three systems.

B. Between July 1, 2019 and July 1, 2020, the accounts and financial control functions that will belong to the early childhood education and care department shall continue being performed by the administrative services divisions of the children, youth and families department, the public education department, the human services department [health care authority department] and the department of health, as appropriate; provided, however, that the administrative services divisions of the children, youth and families department and the department of health shall provide for separate reporting of accounts and finances between the early childhood education and care department and the children, youth and families department and the department of health and shall provide necessary administrative services related to the early childhood education and care department at the direction of the secretary of early childhood education and care.

9-29-6. Secretary; duties and general powers.

A. The secretary is responsible to the governor for the operation of the department. The secretary shall manage the department's operations and ensure compliance with laws applicable to the department.

B. To perform the secretary's duties, and except as otherwise provided by law, the secretary may exercise powers granted to the department.

C. The secretary shall:

(1) except as otherwise provided by the Early Childhood Education and Care Department Act, exercise general supervisory and appointing power over all department employees in accordance with personnel laws;

(2) delegate power to department employees as necessary and appropriate and, in doing so, clearly delineate the limits of the delegated power;

(3) employ and fix the compensation of employees as necessary to perform the duties imposed by law on the secretary and the department;

(4) issue administrative orders and instructions to ensure implementation of and compliance with laws the secretary is charged with administering and enforce those orders and instructions through the courts;

(5) conduct research and studies to improve the department's operations and its delivery of programs;

(6) improve department operations and efficiency and promote the delivery of comprehensive, coordinated, culturally sensitive programs that address overall child well-being and early learning;

(7) provide courses of instruction and practical training for department employees and others involved in administering department programs; and

(8) prepare an annual budget for the department.

D. The secretary, in the name of the department and with the governor's approval, may apply for and receive public or private funding to carry out department programs, duties and services.

E. The secretary and division directors may promulgate reasonable rules as necessary to perform the department's duties. A rule promulgated by a division director is effective only with the secretary's approval.

History: Laws 2019, ch. 48, § 6.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 48, § 38 made Laws 2019, ch. 48, § 6 effective July 1, 2019.

Temporary provisions. — Laws 2019, ch. 48, § 35 provided:

A. After July 1, 2019, the governor may appoint the secretary-designate of early childhood education and care and may allow the secretary-designate to appoint division directors to assist with the transition. The governor shall convene a working group made up of the secretaries of finance and administration, early childhood education and care, children, youth and families and health to plan for the orderly transition of programs and personnel to the early childhood education and care department. The secretaries shall assign staff as necessary to assist the transition. All state agencies shall assist the working group as requested. The following state agencies shall provide the following services:

(1) the general services department shall assist in locating the early childhood education and care department in a state building or an appropriate leased facility;

(2) the department of finance and administration shall set up the administrative services division of the early childhood education and care department and ensure the orderly transition of administrative systems from the children, youth and families department and the department of health to the early childhood education and care department; and

(3) the department of information technology shall set up administrative, programmatic, data and other required systems and ensure the orderly transfer of pertinent data from the children, youth and families department and the department of health to the early childhood education and care department and shall ensure the compatibility of the three systems.

B. Between July 1, 2019 and July 1, 2020, the accounts and financial control functions that will belong to the early childhood education and care department shall continue being performed by the administrative services divisions of the children, youth and families department, the public education department, the human services department [health care authority department] and the department of health, as appropriate; provided, however, that the administrative services divisions of the children, youth and families department and the department of health shall provide for separate reporting of accounts and finances between the early childhood education and care department and the children, youth and families department and the department of health and shall provide necessary administrative services related to the early childhood education and care department at the direction of the secretary of early childhood education and care.

9-29-7. Assistant secretary; appointment; duties.

A. The secretary shall, with the consent of the governor, appoint an assistant secretary for Native American early education and care.

B. The assistant secretary shall:

(1) be responsible to the secretary for the administration, coordination and oversight of Indian early childhood education and care programs;

(2) the assistant secretary shall, in cooperation with the secretary, collaborate with state and federal departments and agencies, tribal governments, eligible providers and community partners to identify ways such entities can assist the department in the implementation of the Early Childhood Education and Care Department Act;

(3) consult with the New Mexico Indian nations, tribes and pueblos for delivery of learning guidelines in Native American language, culture and history designed for tribal and nontribal students;

(4) provide assistance to school districts and educational agencies to expand appropriate Indian education programs for Native American infants, toddlers, children, youth and families pursuant to the federal Indian Child Welfare Act of 1978;

(5) assist with the delivery of culturally relevant education and care for Native American children;

(6) seek funding to establish and strengthen programs related to Native American infants, toddlers, children, youth and families; and

(7) help ensure that Native American language and cultural considerations are included in programs administered through the department.

History: Laws 2019, ch. 48, § 7.

ANNOTATIONS

Cross references. — For the federal Indian Child Welfare Act of 1978, *see* 25 U.S.C. § 1901, et seq.

Effective dates. — Laws 2019, ch. 48, § 38 made Laws 2019, ch. 48, § 7 effective July 1, 2019.

9-29-8. Department; duties.

The department shall:

A. develop priorities for department programs and the use of department resources based on state policy, national best-practice standards, evidence-based interventions and practices and local considerations and priorities;

B. coordinate and align an early childhood education and care system to:

(1) include the family, infant, toddler program, child care, pre-kindergarten, early pre-kindergarten, home visitation, early head start, head start, early childhood special education and early intervention and family support; and

(2) provide New Mexico families with consistent access to appropriate early childhood care and education services;

C. administer the child care assistance, child care facility licensing and registered child care home programs;

D. develop standards for the department-sponsored delivery of early childhood programs;

E. cooperate with other state agencies that affect children to develop common contracting procedures and service definitions and a uniform system of access to early childhood programs;

F. develop reimbursement criteria for child care facilities and home providers licensed by the department;

G. conduct biennial assessments of child care or early learning service gaps and needs and establish plans to address those service gaps and needs;

H. conduct pre-employment fingerprint-based national criminal background checks on all department employees, including those whose employment by the department arises as a result of the transfer provisions of Laws 2019, Chapter 48, Section 34, and on staff members and volunteers of department-contracted providers whose jobs

involve direct contact with children participating in programs delivered by the department or those providers;

I. provide a system of seamless transition from prenatal to early childhood programs to kindergarten;

J. provide consumer education and accessibility to early childhood care and education programs;

K. advance quality early childhood education and care programs to support the development of children to prepare them for success in school;

L. ensure effective collaboration with state and local child welfare programs and early childhood health and behavioral health programs;

M. develop and manage effective data systems to support the necessary functions of a coordinated program;

N. develop an aligned system of workforce development for early childhood professionals;

O. promote culturally and linguistically appropriate programming and provide equal education and care opportunities to non-English speaking families; and

P. upon a request from an Indian nation, tribe or pueblo located in whole or in part in New Mexico, enter into an intergovernmental agreement with the Indian nation, tribe or pueblo, or a tribal organization authorized by the Indian nation, tribe or pueblo by tribal resolution, to plan, conduct, disburse funding to and administer one or more early childhood education and care programs, including the programs listed in Paragraph (1) of Subsection B of this section, with the Indian nation, tribe or pueblo, or authorized tribal organization, using its own culturally and linguistically relevant standards, assessments and evaluations.

History: Laws 2019, ch. 48, § 8; 2022, ch. 30, § 3; 2023, ch. 20, § 1.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, authorized the early childhood education and care department to enter into intergovernmental agreements with tribal governments to plan, conduct, disburse funding to and administer one or more early childhood education and care programs; and added Subsection P.

The 2022 amendment, effective July 1, 2022, expanded the scope of the early childhood education and care system; in Subsection B, Paragraph B(1), after "include", added "the family, infant, toddler program", and in Paragraph B(2), after "access to appropriate", added "early childhood"; in Subsection C, after "child care", added

"facility"; and in Subsection F, after "criteria for child care", deleted "centers" and added "facilities".

9-29-8.1. Criminal history investigations; procedures; confidentiality; violation; penalty.

A. To investigate the suitability of an applicant for licensure as a licensed child care facility, registration as a child care home program or for employment or volunteering at a licensed child care facility or registered child care home, including any facility or program that has primary custody of infants, toddlers and children for twenty hours or more per week, or for employees and volunteers of the department and employees and volunteers of department-contracted providers, the department shall have access to criminal history records information furnished by the department of public safety and the federal bureau of investigation, subject to any restrictions imposed by federal law.

B. An applicant for a child care facility license or registration or for employment or volunteering at a licensed child care facility or registered child care home or employees and volunteers of the department and employees and volunteers of department-contracted providers shall undergo a state and national criminal history records check, and the applicant shall submit an electronic set of fingerprints to the department of public safety for that purpose. The department of public safety shall conduct a check of state criminal history records and forward the fingerprints to the federal bureau of investigation for a national criminal history records check to determine the existence and content of records of convictions and arrests in this state or other law enforcement jurisdictions and to generate a criminal history records check in accordance with rules of the department of public safety and regulations of the federal bureau of investigation. The department of public safety shall review the information obtained from the criminal history records check and shall compile and provide that information to the early childhood education and care department. The early childhood education and care department shall use the information to investigate and determine whether an applicant is qualified to hold a license or an employment or volunteer position. The department shall promulgate rules for the investigation and determination of qualifications.

C. Criminal history information obtained by the department is confidential and shall be used only for the purpose of determining the suitability for licensure, employment or volunteer service and shall not be disclosed to anyone other than public employees directly involved in the decision affecting the applicant.

D. A person who releases or discloses criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2022, ch. 30, § 4; 2023, ch. 75, § 2; 2024, ch. 28, § 1.

ANNOTATIONS

The 2024 amendment, effective February 29, 2024, amended an existing provision that required criminal background checks for applicants for child care facility license or registration or for employment or volunteering at a licensed child care facility or registered child care home, or employees and volunteers of department-contracted providers, to include background checks for direct employees and volunteers of the early childhood education and care department; and in Subsections A and B, after "employees and volunteers of", added "the department and employees and volunteers of".

The 2023 amendment, effective July 1, 2023, expanded the early childhood education and care department's duties on conducting background checks to determine the suitability of applicants for licensure as a licensed child care facility or registration as a child care home program or for employees or volunteers of department-contracted providers, and required applicants for a child care facility license or for employment or volunteering at a licensed child care facility or registered child care home or employees and volunteers of department-contracted providers to undergo a state and national criminal history records check; in Subsection A, after "licensure as a", added "licensed", after "child care facility", deleted "or child care home program" and added "registration as a child care home program", and after "per week", added "or for employees and volunteers of department-contracted providers"; and in Subsection B, after "An applicant for a", added "child care facility", and after "employment or volunteering", added "at a licensed child care facility or registered child care home or employees and volunteers of department-contracted providers".

9-29-9. Records and confidentiality.

The department may access records and data of other state agencies that are not made expressly confidential by law. The department shall enter into agreements with the children, youth and families department and the public education department to share and maintain confidential information in accordance with federal and state confidentiality laws.

History: Laws 2019, ch. 48, § 9.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 48, § 38 made Laws 2019, ch. 48, § 9 effective July 1, 2020.

9-29-10. Family, infant, toddler program.

A. As used in this section:

(1) "early intervention programs" means programs, including physical development, communications development, adaptive development, social and

emotional development and sensory development programs, designed to meet the developmental needs of eligible children;

(2) "eligible child" means a child from birth to age thirty-six months with developmental delay or who, according to department of health-established criteria, is at risk of developmental delay; and

(3) "program" means the family, infant, toddler program.

B. The department is the lead state agency for the program. Through the program, the department shall develop and administer a statewide system of comprehensive, coordinated, multidisciplinary and interagency early intervention programs to eligible children.

C. The parent of an eligible child may choose whether to enroll the child in the program.

D. The children, youth and families department, the department of health, the human services department [health care authority department], the public education department and other publicly funded providers of services to eligible children shall collaborate with the department to provide program services and shall establish the division of responsibilities for providing those services in interagency agreements.

E. The secretary shall comply with the federal Individuals with Disabilities Education Act, Part C, contingent on participation by the state, including by:

(1) establishing related policies and promulgating program rules;

(2) implementing procedures to ensure that program services are timely delivered;

(3) administering and overseeing the program;

(4) resolving complaints related to the program;

(5) maintaining and expanding interagency and state and local coordination in implementing the program;

(6) identifying and coordinating resources for delivering early intervention programs through the program; and

(7) establishing minimum requirements to qualify personnel to deliver services through the program.

F. The department is the custodian of money received by the state from the federal government for the purpose of implementing the federal Individuals with Disabilities Education Act, Part C.

History: Laws 2019, ch. 48, § 10.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

Cross references. — For the federal Individuals with Disabilities Education Act, see 20 U.S.C. § 1400.

Effective dates. — Laws 2019, ch. 48, § 38 made Laws 2019, ch. 48, § 10 effective July 1, 2020.

Temporary provisions. — Laws 2019, ch. 48, § 34 provided:

A. On July 1, 2020, all programs, functions, personnel, appropriations, money, statutory funds, records, furniture, equipment, supplies and other property belonging to the following are transferred to the early childhood education and care department, and all contractual obligations of the following are binding on the early childhood education and care department:

(1) the children, youth and families department's early childhood services division; and

(2) the department of health's:

(a) family, infant, toddler program; and

(b) family first home visiting.

B. Beginning on July 1, 2020, all contractual obligations pertaining to the programs, services and entities in Subsection A of this section are binding on the early childhood education and care department.

C. Beginning on July 1, 2020, all references in law, rules, orders and other official acts to the programs, services and entities in Subsection A of this section shall be deemed references to the early childhood education and care department.

9-29-11. Early childhood programs.

A. The department shall convene an advisory council consisting primarily of eligible providers, community organizations, employees who reflect the demographics of the current early childhood workforce throughout the state, employee representatives and representatives of the legislative finance committee and the department of finance and administration to:

(1) develop an outcomes measurement plan to monitor outcomes for children and families receiving services through early childhood programs;

(2) as part of that plan, develop goals and objectives with corresponding indicators that measure whether each of those objectives is reached;

(3) as part of the work of the council, a workforce development plan shall be developed to include a career ladder, wage structure and professional development plan that applies to the full continuum of programs within the department, as well as other items deemed appropriate by the secretary; and

(4) submit the plan by December 31, 2020 to the legislature and the governor.

B. By December 31 of each year, the department shall develop and submit to the legislature and the governor an annual report on outcomes for children and families receiving services through early childhood programs that includes:

(1) the number and type of early childhood programs funded by the department;

(2) the income levels of families served through those programs;

(3) the reasons stated by families for applying for participation in those programs;

(4) the number of children served through those programs, including by county and the monthly average;

(5) evidence of improved school readiness, child development and literacy among children served through those programs;

(6) the number of kindergarten-age children served through those programs who enter kindergarten ready to learn;

(7) the number and percentage of children served through those programs who receive regular immunizations;

(8) evidence that children served through those programs are served meals regularly;

(9) retention rates, wages and certification and education levels of those programs' staff members; and

(10) evidence that families of children served through those programs are engaged in the programs.

History: Laws 2019, ch. 48, § 11.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 48, § 38 made Laws 2019, ch. 48, § 11 effective July 1, 2020.

Temporary provisions. — Laws 2019, ch. 48, § 34 provided:

A. On July 1, 2020, all programs, functions, personnel, appropriations, money, statutory funds, records, furniture, equipment, supplies and other property belonging to the following are transferred to the early childhood education and care department, and all contractual obligations of the following are binding on the early childhood education and care department:

(1) the children, youth and families department's early childhood services division; and

(2) the department of health's:

(a) family, infant, toddler program; and

(b) family first home visiting.

B. Beginning on July 1, 2020, all contractual obligations pertaining to the programs, services and entities in Subsection A of this section are binding on the early childhood education and care department.

C. Beginning on July 1, 2020, all references in law, rules, orders and other official acts to the programs, services and entities in Subsection A of this section shall be deemed references to the early childhood education and care department.

9-29-12. Early childhood education and care finance plan.

A. The department shall prepare and update a four-year early childhood education and care finance plan to provide the legislature and the governor with demographic information on at-risk children, data on the efficacy of early childhood education and care programs and recommendations for financing the early childhood education and care system.

B. The department shall include in the early childhood education and care finance plan:

(1) an identification of:

(a) the social, emotional, cognitive, health, educational, safety and other needs and risk factors of children by age and location;

(b) the availability of, cost of and funding for programs that address those needs and reduce those risks by: 1) type of program; 2) age of program participant; and 3) geographic location;

(c) the gaps between those needs and the programs that address those needs and the reasons for those gaps; and

(d) the funding for each of the previous four years for programs that address those needs and reduce those risks;

(2) an evaluation of the early childhood education and care system by service type;

(3) an assessment of whether desired outcomes have been reached for each of the previous four years; and

(4) recommendations for legislation, funding and other changes necessary to improve that system and to close the gaps in those programs.

C. The department shall post prominently on its website the early childhood education and care finance plan in a user-friendly, searchable format.

History: Laws 2019, ch. 48, § 12.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 48, § 38 made Laws 2019, ch. 48, § 12 effective July 1, 2020.

ARTICLE 29A
Early Childhood Education and Care Fund

9-29A-1. Early childhood education and care fund.

A. The "early childhood education and care fund" is created within the state treasury. The fund shall consist of distributions, appropriations, gifts, grants and

donations. Income from investment of the fund shall be credited to the fund. Money in the fund shall be expended only as provided in this section.

B. The state investment officer, subject to the approval of the state investment council, shall invest money in the early childhood education and care fund:

(1) in accordance with the prudent investor rule set forth in the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978]; and

(2) in consultation with the state treasurer.

C. The state investment officer shall report quarterly to the legislative finance committee and the state investment council on the investments made pursuant to this section. Annually, a report shall be submitted no later than October 1 each year to the legislative finance committee, the revenue stabilization and tax policy committee and any other appropriate interim committees.

D. On July 1 of each year, a distribution shall be made from the early childhood education and care fund to the early childhood education and care program fund in an amount equal to the greater of five percent of the average of the year-end market values of the fund for the immediately preceding three calendar years or one hundred fifty million dollars ($150,000,000).

E. In addition to the distribution pursuant to Subsection D of this section, money in the early childhood education and care fund may be expended in the event that general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, the appropriation contingency fund, the tobacco settlement permanent fund, the state-support reserve fund and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, to avoid an unconstitutional deficit, the legislature may appropriate from the early childhood education and care fund to the general fund only in the amount necessary to meet general fund appropriations for that fiscal year and only if the legislature has authorized transfers from the appropriation contingency fund, the general fund operating reserve, the tax stabilization reserve and the tobacco settlement permanent fund that exhaust those fund balances.

History: Laws 2020, ch. 3, § 1; 2023, ch. 146, § 1.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, increased the amount that is transferred to the early childhood education and care program fund from the early childhood education and care fund; and in Subsection D, after "On July 1", deleted "2021, a distribution shall be made from the early childhood education and care fund to the early childhood education and care program fund in the amount of twenty million dollars ($20,000,000) and on July 1, 2022 and on each July 1 thereafter" and added "of each

year", and after "calendar years or", deleted "thirty million dollars ($30,000,000)" and added "one hundred fifty million dollars ($150,000,000)".

9-29A-2. Early childhood education and care program fund.

The "early childhood education and care program fund" is created as a nonreverting fund in the state treasury. The fund consists of distributions, appropriations, gifts, grants, donations and income from investment of the fund. The early childhood education and care department shall administer the fund. Money in the fund is subject to appropriation by the legislature for early childhood education and care services and programs. Expenditures from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of early childhood education and care or the secretary's authorized representative.

History: Laws 2020, ch. 3, § 2.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 3, § 8 made Laws 2020, ch. 3, § 2 effective July 1, 2020.

9-29A-3. Distribution; early childhood education and care fund; payments pursuant to federal Mineral Leasing Act.

A. If, by June 30, 2022 and by June 30 of each fiscal year thereafter, the net receipts for that fiscal year of the money received by the state pursuant to the federal Mineral Leasing Act exceed the annual average amount, the excess shall be distributed to the early childhood education and care fund and attributed to that fiscal year. If there is an excess amount, the distribution shall be made as soon as practicable. If there is not an excess amount, no distribution shall be made to the fund. The department of finance and administration shall make the calculation to determine if an excess amount shall be distributed.

B. As used in this section, "annual average amount" means the total net receipts attributable to money received by the state pursuant to the federal Mineral Leasing Act in the immediately preceding five fiscal years, divided by five.

History: Laws 2020, ch. 3, § 3.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 3, § 8 made Laws 2020, ch. 3, § 3 effective July 1, 2020.

Cross references. — For the federal Mineral Leasing Act, *see* 30 U.S.C.

9-29A-3. Distribution; early childhood education and care fund; severance tax permanent fund; payments pursuant to federal Mineral Leasing Act. (Effective July 1, 2024.)

A. If, by June 30 of each fiscal year, the net receipts for that fiscal year of the money received by the state pursuant to the federal Mineral Leasing Act exceed the annual average amount, the excess amount above the annual average amount shall be distributed to the early childhood education and care fund and attributed to that fiscal year.

B. If, by June 30, 2025, and by June 30 of each fiscal year thereafter, the remaining amount of the net receipts for that fiscal year of the money received by the state pursuant to the federal Mineral Leasing Act after the distribution pursuant to Subsection A of this section exceeds the threshold amount, the excess shall be distributed to the severance tax permanent fund.

C. The department of finance and administration shall make the calculations to determine if excess amounts shall be distributed pursuant to this section. If there is an excess amount, the distribution shall be made as soon as practicable. If there is not an excess amount, no distribution shall be made.

D. As used in this section:

(1) "annual average amount" means the total net receipts attributable to money received by the state pursuant to the federal Mineral Leasing Act in the immediately preceding five fiscal years, divided by five; and

(2) "threshold amount" means the net receipts of the money received by the state pursuant to the federal Mineral Leasing Act distributed in fiscal year 2024 pursuant to Subsection B of Section 22-8-34 NMSA 1978.

History: *Laws 2020, ch. 3, § 3; 2023, ch. 22, § 3.*

ANNOTATIONS

The 2023 amendment, *effective July 1, 2024, provided for the distribution of certain federal Mineral Leasing Act payments to the severance tax permanent fund, and defined "threshold amount" as used in this section; in Subsection A, deleted "June 30, 2022 and by", after "each fiscal year", deleted "thereafter", after "the excess", added "amount above the annual average amount", and, deleted "If there is an excess amount, the distribution shall be made as soon as practicable. If there is not an excess amount, no distribution shall be made to the fund. The department of finance and administration shall make the calculation to determine if an excess amount shall be distributed."; added new Subsections B and C and redesignated former Subsection B as Subsection D; and added Subsection D(2).*