

# CHAPTER 9

## Executive Department

### ARTICLE 1

#### Executive Reorganization Act

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

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

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

#### ANNOTATIONS

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

For elected officials generally, see Chapter 8 NMSA 1978.

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

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

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

**Temporary provisions.** — Laws 2003, ch. 403 § 1, effective June 20, 2003, provides for the purpose of elevating the state agency on aging to a cabinet-level, the purpose of elevating the office of cultural affairs to a cabinet-level department, the purpose of elevating the New Mexico office of Indian affairs to a cabinet-level department, and the purpose of elevating the New Mexico veterans' service commission to a cabinet-level department.

Laws 2003, ch. 403 § 1, effective June 20, 2003, provides that the governor may, by executive order issued in 2003, make the following state agencies cabinet-level departments: (1) the state agency on aging may become the aging and long-term care department; (2) the office of cultural affairs may become the cultural affairs department; (3) the New Mexico office of Indian affairs may become the Indian affairs department; and (4) the New Mexico veterans' service commission may become the veterans' service department.

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

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

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

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

## ANNOTATIONS

**Compiler's notes.** — The reorganization laws enacted by the first regular session of the thirty-third legislature are Laws 1977, chs. 245 to 258. For disposition of these laws in NMSA 1978, see the Table of Disposition of Acts in Volume 14.

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

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

B. The cabinet shall:

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

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

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

## ANNOTATIONS

**Cross references.** — For cabinet departments and secretaries serving in cabinet, see 9-2A-4 (children, youth and families); 9-3-3, 9-3-4A (corrections); 9-5A-3, 9-5A-5A (energy, minerals and natural resources); 9-6-3, 9-6-4 (finance and administration); 9-7-4, 9-7-5A (health); 9-7A-4, 9-7A-5A (environment); 9-8-4, 9-8-5A (human services); 9-11-4, 9-11-5A (taxation and revenue); 9-15-4, 9-15-5 (economic development and tourism), 9-15A-3 (tourism), 9-17-3, 9-17-4 (general services), 9-18-4, 9-18-6A (labor) and 9-19-4, 9-19-5A (public safety) NMSA 1978.

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

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

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

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

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

(3) the principal unit of a division is a "bureau," headed by a "chief," who is employed by the secretary and who is covered by, and subject to, provisions of the Personnel Act [10-9-1 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 [10-9-1 NMSA 1978].

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

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

## ANNOTATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) prepare an annual budget of the department;

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

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

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

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

(10) appoint, with the governor's consent, for each division, a "director." These appointed positions are exempt from the provisions of the Personnel Act [10-9-1 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 such bonds; and

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

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

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

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

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

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

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

#### **ANNOTATIONS**

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

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

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

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

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

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

#### **ANNOTATIONS**

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

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

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

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

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

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

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

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

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

C. Unless otherwise provided by law, the agency shall hire its own personnel in accordance with the Personnel Act [10-9-1 NMSA 1978].

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

#### **ANNOTATIONS**

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

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

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

A. Advisory committees may be created. Advisory shall mean furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or to comply with federal or private funding requirements, and shall not extend to administering a program or function or setting policy unless specified by law.

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

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

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

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

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

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



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

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

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

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

### ANNOTATIONS

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

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

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

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

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

### ANNOTATIONS

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

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

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

**History:** Laws 1979, ch. 205, § 3.

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

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

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

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

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

## **ANNOTATIONS**

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

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

**Current application.** — An Executive Order, issued pursuant to this section, under which the New Mexico Real Estate Commission was placed under the supervision of the New Mexico Regulation and Licensing Department has not yet been replaced or repealed and continues today as does this section and is therefore the current law. *New Mexico Regulation & Licensing Dep't 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 (Chapter 9, Article 16 NMSA 1978) do not supersede the specific powers and duties that the legislature has given to the board of veterinary examiners pursuant to the Veterinary Practice Act. 1987 Op. Att'y Gen. No. 87-58.

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

## ARTICLE 2

### Commerce and Industry Department

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

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

#### ANNOTATIONS

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

**Compiler's notes.** — Laws 1983, ch. 295, § 4, purported to amend 9-2-3 NMSA 1978, relating to the establishment of the commerce and industry department, but this

amendment was not given effect due to the repeal of 9-2-3 NMSA 1978 by Laws 1983, ch. 297, § 33. See 12-1-8 NMSA 1978.

## **ARTICLE 2A**

### **Children, Youth and Families Department**

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

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

**History:** Laws 1992, ch. 57, § 1.

#### **ANNOTATIONS**

**Cross references.** — As to duties relating to the Safe Haven for Infants Act, see Chapter 32A, Article 22.

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

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

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

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

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 [9-2A-1 to 9-2A-16 NMSA 1978]:

- A. "department" means the children, youth and families department; and
- B. "secretary" means the secretary of children, youth and families.

**History:** Laws 1992, ch. 57, § 3.

### **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, five divisions as follows:

- (1) the protective services division;
- (2) the juvenile justice division;
- (3) the prevention and intervention division;
- (4) the financial services division; and
- (5) the employee support 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.

### **ANNOTATIONS**

**The 2003 amendment**, effective June 20, 2003, substituted "five divisions" for "six divisions" and substituted the present Paragraphs A(1) through (5) for the former Paragraphs A(1) through (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. Administratively attached agency.**

The juvenile parole board is administratively attached to the department.

**History:** Laws 1992, ch. 57, § 5.

## **ANNOTATIONS**

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

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

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

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

**History:** Laws 1992, ch. 57, § 6.

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

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

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

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

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

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

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

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

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

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

(8) prepare an annual budget for the department;

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

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

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

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

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

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

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

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

- (1) the period of notice of public hearing shall be fifteen days;
- (2) the department shall send individual notices of the interim rulemaking and of the public hearing to affected providers and beneficiaries;
- (3) rules and regulations promulgated under this subsection shall be in effect not less than five days after the public hearing;
- (4) rules and regulations promulgated under this subsection shall not be in effect for more than ninety days; and
- (5) if final rules and regulations are necessary to replace the interim rules and regulations, the department shall give notice of intent to promulgate final rules and regulations at the time of notice herein. The final rules and regulations shall be promulgated not more than forty-five days after the public hearing filed in accordance with the State Rules Act.

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

## **ANNOTATIONS**



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

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

### **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 [32A-1-1 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 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; and

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.

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

### **ANNOTATIONS**

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

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

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

**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.

### **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.

### **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 [10-9-1 NMSA 1978].

**History:** Laws 1992, ch. 57, § 10.

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

The secretary may establish within each division such "bureaus" as he deems necessary to carry out the provisions of the Children, Youth and Families Department Act [9-2A-1 to 9-2A-16 NMSA 1978]. He shall appoint a "chief" to be the administrative head of any such bureau. The chief and all subsidiary employees of the department shall be covered by the provisions of the Personnel Act [10-9-1 NMSA 1978].

**History:** Laws 1992, ch. 57, § 11.

### **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. Interagency coordinating group.**

There is created an "interagency coordinating group" consisting of the secretary of finance and administration, the secretary of health, the secretary of human services, the secretary of labor, the superintendent of public instruction, the chairman of the joint interim legislative health and human services committee and a member of the

governor's office. The group shall assist the secretary of children, youth and families and the children, youth and families advisory committee in planning coordination of services. If the governor creates a children's cabinet through executive order, the children's cabinet shall assume the functions and duties of the interagency coordinating group.

**History:** Laws 1992, ch. 57, § 13; 2003, ch. 338, § 5.

#### **ANNOTATIONS**

The **2003 amendment**, effective June 20, 2003, added the final sentence.

#### **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**

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

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

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

**History:** Laws 1992, ch. 57, § 15.

#### **ANNOTATIONS**

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

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

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

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

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

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

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

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

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

**History:** Laws 1992, ch. 57, § 16.

### **ANNOTATIONS**

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

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

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

A. Correctional officers of the children, youth and families department who have completed an appropriate American correction association training course and who

have at the particular time the principal duty to hold in custody or supervise any person accused or convicted of a delinquent act or criminal offense shall have the power of a peace officer with respect to arrests and enforcement of laws when:

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

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

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

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

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

**History:** Laws 1993, ch. 120, § 1.

### **ANNOTATIONS**

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

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

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

A. be citizens of the United States;

B. be eighteen years of age or older;

C. possess a high school education or its equivalent;

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

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

**History:** Laws 1997, ch. 110, § 1.

### **9-2A-19. Short title.**

This act [2-2A-19 to 9-2A-22 NMSA 1978] may be cited as the "Youth Council Act".

**History:** Laws 2003, ch. 324, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 324 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

### **9-2A-20. Purpose.**

The purpose of the Youth Council Act [9-2A-19 to 9-2A-22 NMSA 1978] is to encourage young people throughout New Mexico to consider and discuss the problems they face and to develop possible solutions for presentation to the governor, lieutenant governor and legislature.

**History:** Laws 2003, ch. 324, § 2.

## **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 324 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

### **9-2A-21. Youth council created; organization; functions; definition.**

A. The "youth council" is created in the children, youth and families department.

B. The council shall consist of at least one youth, aged fourteen to nineteen, from each New Mexico legislative district to be selected by county child welfare advocates and officials, educational advisors, faith-based organizations and community-based youth-serving organizations, in consultation with the legislators from whose district the youth is being selected.

C. The council shall meet at least four times a year for the purpose of discussing the problems faced by New Mexico youth and to recommend possible solutions to these problems to be presented to the governor, lieutenant governor and legislature. Meetings shall not be scheduled to interfere with council participants' school attendance.

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

E. As used in the Youth Council Act [9-2A-19 to 9-2A-22 NMSA 1978], "council" means the youth council.

**History:** Laws 2003, ch. 324, § 3.

## ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 324 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

### **9-2A-22. Youth council coordinator; position created; duties.**

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

B. The coordinator shall:

(1) select, in consultation with the appropriate legislators, county child welfare advocates and officials, educational advisors, faith-based organizations and community-based youth-serving organizations, a diverse cross section of youths for the council from throughout the state;

(2) organize four council meetings a year, four of which will include the lieutenant governor and two of which will include the governor;

(3) ensure that there is adequate adult supervision for youths participating in council activities;

(4) assist the council in preparing an annual report on its activities and findings; and

(5) act as a liaison between the council and any interagency coordinating group consisting of certain cabinet secretaries if that entity is established by executive order.

**History:** Laws 2003, ch. 324, § 4.

## ANNOTATIONS



**Effective dates.** — Laws 2003, ch. 324 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

## **ARTICLE 3**

### **Corrections Department**

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

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

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

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

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

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

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

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

- A. the adult institutions division;
- B. the adult probation and parole division;
- C. the training academy division;

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

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

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

## ANNOTATIONS

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

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

For law enforcement generally, see Chapter 29 NMSA 1978.

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

For correctional institutions generally, see Chapter 33 NMSA 1978.

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

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

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

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

Laws 1981, ch. 73 and ch. 127 renamed the corrections and criminal rehabilitation department as the corrections department. Ch. 73 transferred the property, personnel

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

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

### **9-3-3.1. 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 makes the act effective on 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 [9-3-1 NMSA 1978], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

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

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

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

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the

provisions of law for whose administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action or actions in the courts;

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

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

(8) prepare an annual budget of the department;

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

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

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

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

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act [10-9-1 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 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 [14-4-1 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 6-3-22 NMSA 1978.

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

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

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

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

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

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

Except as otherwise provided by law, the secretary shall appoint, with the approval of the governor, "directors" of such divisions as are established within the department. The directors so appointed are exempt from the Personnel Act [10-9-1 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 [9-3-1 to 9-3-12 NMSA 1978]. He shall appoint a "chief" to be the administrative head of any such bureau. The chief and all subsidiary employees of the department shall be covered by the Personnel Act [10-9-1 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**

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

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

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

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

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

- (1) keeping all official records of the department;
- (2) providing clerical services in the areas of personnel and budget preparation; and
- (3) providing clerical, record-keeping and administrative support to agencies administratively attached to the department, at their request.

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

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

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

### ANNOTATIONS

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

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

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

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

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

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

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

D. reports submitted by the criminal justice coordinating council.

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



### **9-3-10. 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-three 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 district attorneys association of New Mexico;
- (3) the chief public defender;
- (4) two district court judges, one of whom shall be a children's court judge, appointed by the district court judge's association of New Mexico;
- (5) a judge from the court of appeals appointed by the chief judge of the court of appeals;
- (6) the dean of the university of New Mexico school of law;
- (7) the secretary of corrections;
- (8) the secretary of public safety;
- (9) the secretary of children, youth and families;
- (10) a county sheriff appointed by the executive director of the New Mexico association of counties;
- (11) two public members appointed by the governor, one of whom shall be designated as chairman of the New Mexico sentencing commission by the governor;
- (12) three public members appointed by the president pro tempore of the senate;
- (13) three public members appointed by the speaker of the house of representatives;
- (14) two public members appointed by the chief justice of the supreme court;

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

(16) one public member appointed by the governor who is a representative of a New Mexico victim 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 New Mexico sentencing 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 [30-1-1 NMSA 1978], the Criminal Sentencing Act [Chapter 31, Article 18 NMSA 1978] 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 assure 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; and

(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.

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.

## ANNOTATIONS

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

**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.

**Temporary provisions.** — Laws 2003, ch. 75, § 6, on July 1, 2003, provides that all personnel, appropriations, money, records, furniture, equipment and other personal and real property of the criminal and juvenile justice coordinating council shall be transferred to the New Mexico sentencing commission; all contracts and other obligations binding on the criminal and juvenile justice coordinating council shall be transferred to the New Mexico sentencing commission; and all references in the law to the criminal and juvenile justice coordinating council shall be deemed to be references to the New Mexico sentencing commission.

### **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.

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

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

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

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

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

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

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

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

**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;
- (2) a district attorney appointed by the district attorneys association of New Mexico;
- (3) the chief public defender;
- (4) a district court judge appointed by the district court judge's association of New Mexico;
- (5) the secretary of corrections;
- (6) the secretary of health;
- (7) the secretary of children, youth and families;
- (8) one public member appointed by the governor who is a board member of a New Mexico victims organization;
- (9) 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;
- (10) 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;
- (11) a representative appointed by the governor from the law enforcement community who has expertise regarding sex offender community notification, registration, tracking and monitoring;

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

(13) 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 [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.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2003 (1st S.S.), ch. 1 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on February 3, 2004, 90 days after adjournment of the legislature.

## **ARTICLE 4**

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

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

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

#### **ANNOTATIONS**

**Repeals.** — Laws 1980, ch. 151, § 58, repeals 9-4-1 to 9-4-7 NMSA 1978, as enacted by Laws 1977, ch. 246, §§ 1 to 7, relating to the educational finance and cultural affairs

department, effective March 5, 1980. For provisions of former sections, see 1977 Original Pamphlet.

## **ARTICLE 4A**

### **Cultural Affairs Department**

#### **9-4A-1. Short title.**

Sections 1 through 10 of this act may be cited as the "Cultural Affairs Department Act".

History: Laws 2004, ch. 25, § 1.

#### **ANNOTATIONS**

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

**Compiler's note.** — Laws 2004, ch. 25, § 52 recompiled Section 18-3-8 NMSA 1978 into the Cultural Affairs Department Act. It has been compiled as 9-4A-11 NMSA 1978.

#### **9-4A-2. Purpose.**

The purpose of the Cultural Affairs Department Act [9-4A-1 NMSA 1978] 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

#### **9-4A-3. Definitions.**

As used in the Cultural Affairs Department Act [9-4A-1 NMSA 1978]:

- 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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. administrative services division;
- B. arts division;
- C. historic preservation division;
- D. library division;
- E. Hispanic cultural division;
- F. farm and ranch heritage museum division;
- G. natural history and science museum division;
- H. museum of space history division;
- I. museum services division; and
- J. the following divisions that make up the museum of New Mexico:
  - (1) palace of the governors state history museum division;
  - (2) museum of fine art division;
  - (3) museum of Indian arts and culture division;
  - (4) museum of international folk art division;
  - (5) archaeological services division; and
  - (6) state monuments division.

History: Laws 2004, ch. 25, § 4.

## ANNOTATIONS

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

**Transfer of personnel, equipment and funds.** — Laws 2004, ch. 25, § 51, effective May 19, provides for the transfer of functions, personnel, appropriations, money, records, equipment, supplies, other property and contractual obligations of the office of cultural affairs to the cultural affairs department pursuant to executive order issued in accordance with Laws 2003, Chapter 403 and to provide that all statutory references to the office of cultural affairs shall be deemed to be references to the cultural affairs department.

### **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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 he 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 of the department, or any division of the department, except where authority conferred upon any division therein is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Cultural Affairs Department Act [9-4A-1 NMSA 1978], 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, 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 [10-9-1 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, 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 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 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 [14-4-1 NMSA 1978].

History: Laws 2004, ch. 25, § 6.

#### **ANNOTATIONS**

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

#### **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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 [10-9-1 NMSA 1978].

History: Laws 2004, ch. 25, § 8.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 25 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 [9-4A-1 NMSA 1978]. 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 [10-9-1 NMSA 1978], unless otherwise provided by law.

History: Laws 2004, ch. 25, § 9.

#### **ANNOTATIONS**

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

#### **9-4A-11. Laboratory of anthropology; acceptance of deed and title.**

The state of New Mexico accepts the deed and bill of sale and the title of the laboratory of anthropology building and land described in the deed dated September 30, 1947 and directs that the property become part of the museum of New Mexico and be controlled and administered by the cultural affairs department.

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; Laws 2004, ch. 25, § 20; recompiled Laws 2004, ch. 25, § 52.

#### ANNOTATIONS

**The 2004 amendment**, effective May 19, 2004, changed "museum division of office of cultural affairs" to "cultural affairs department".

**Recompilation.** — Laws 2004, ch. 25, § 52 recompiled Section 18-3-8 NMSA 1978 as part of the Cultural Affairs Department Act. It has been recompiled as 9-4A-11 NMSA 1978.

#### **9-4A-12. Museum services division.**

The "museum services division" is created within the cultural affairs department. The museum services 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.

#### ANNOTATIONS

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

#### **9-4A-13. Museum of fine art division created; location; board of regents.**



A. The "museum of fine art division" is created in the cultural affairs department. The museum of fine art located in Santa Fe shall be operated as a division of the cultural affairs department under the imprimatur of the museum of New Mexico. The museum of New Mexico board of regents shall exercise trusteeship over the museum of fine art.

B. The director of the division shall meet the following minimum qualifications:

(1) hold a bachelor's or higher degree in a discipline related to the function of the division; and

(2) have significant experience in the management and operation of an organization similar to the division.

C. The director shall be appointed by the secretary of cultural affairs from a list of no less than three names provided by the museum of New Mexico board of regents.

History: Laws 2004, ch. 25, § 13.

#### **ANNOTATIONS**

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

#### **9-4A-14. Palace of the governors state history museum division created; location; board of regents.**

A. The "palace of the governors state history museum division" is created in the cultural affairs department. The palace of the governors state history museum located in Santa Fe shall be operated as a division of the cultural affairs department under the imprimatur of the museum of New Mexico. The museum of New Mexico board of regents shall exercise trusteeship over the palace of the governors state history museum.

B. The director of the division shall meet the following minimum qualifications:

(1) hold a bachelor's or higher degree in a discipline related to the function of the division; and

(2) have significant experience in the management and operation of an organization similar to the division.

C. The director shall be appointed by the secretary of cultural affairs from a list of no less than three names provided by the museum of New Mexico board of regents.

History: Laws 2004, ch. 25, § 14.

#### ANNOTATIONS

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

#### **9-4A-15. Museum of international folk art division created; location; board of regents.**

A. The "museum of international folk art division" is created in the cultural affairs department. The museum of international folk art located in Santa Fe shall be operated as a division of the cultural affairs department under the imprimatur of the museum of New Mexico. The museum of New Mexico board of regents shall exercise trusteeship over the museum of international folk art.

B. The director of the division shall meet the following minimum qualifications:

(1) hold a bachelor's or higher degree in a discipline related to the function of the division; and

(2) have significant experience in the management and operation of an organization similar to the division.

C. The director shall be appointed by the secretary of cultural affairs from a list of no less than three names provided by the museum of New Mexico board of regents.

History: Laws 2004, ch. 25, § 15.

#### ANNOTATIONS

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

#### **9-4A-16. Museum of Indian arts and culture division created; location; board of regents.**

A. The "museum of Indian arts and culture division" is created in the cultural affairs department. The museum of Indian arts and culture located in Santa Fe shall be operated as a division of the cultural affairs department under the imprimatur of the museum of New Mexico. The museum of New Mexico board of regents shall exercise trusteeship over the museum of Indian arts and culture.

B. The director of the division shall meet the following minimum qualifications:

(1) hold a bachelor's or higher degree in a discipline related to the function of the division; and

(2) have significant experience in the management and operation of an organization similar to the division.

C. The director shall be appointed by the secretary of cultural affairs from a list of no less than three names provided by the museum of New Mexico board of regents.

History: Laws 2004, ch. 25, § 16.

### ANNOTATIONS

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

### **9-4A-17. State monuments division created; board of regents.**

A. The "state monuments division" is created in the cultural affairs department. The division shall manage the state's monuments, including:

(1) Coronado state monument;

(2) Jemez state monument;

(3) Fort Selden state monument;

(4) Fort Sumner state monument;

(5) Lincoln state monument;

(6) el camino real international heritage center; and

(7) The Taylor Reynolds Barela Mesilla state monument.

B. The state monuments shall operate under the imprimatur of the museum of New Mexico. The museum of New Mexico board of regents shall exercise trusteeship over the state monuments.

C. The director of the division shall meet the following minimum qualifications:

(1) hold a bachelor's or higher degree in a discipline related to the function of the division; and

(2) have significant experience in the management and operation of an organization similar to the division.

D. The director shall be appointed by the secretary of cultural affairs from a list of no less than three names provided by the museum of New Mexico board of regents.

History: Laws 2004, ch. 25, § 17.

### ANNOTATIONS

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

### **9-4A-18. Archaeological services division created; board of regents.**

A. The "archaeological services division" is created in the cultural affairs department. The division shall be operated as a division of the cultural affairs department under the imprimatur of the museum of New Mexico.

B. The museum of New Mexico board of regents shall exercise trusteeship over the archaeological services division.

C. The director of the division shall meet the following minimum qualifications:

(1) hold a bachelor's or higher degree in a discipline related to the function of the division; and

(2) have significant experience in the management and operation of an organization similar to the division.

D. The director shall be appointed by the secretary of cultural affairs from a list of no less than three names provided by the museum of New Mexico board of regents.

History: Laws 2004, ch. 25, § 18.

### ANNOTATIONS

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

## **ARTICLE 5**

### **Energy and Minerals Department**

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

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

### **ANNOTATIONS**

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

## **ARTICLE 5A**

### **Energy, Minerals and Natural Resources Department**

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

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

**History:** Laws 1987, ch. 234, § 1.

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

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

**History:** Laws 1987, ch. 234, § 2.

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

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

- (1) the administrative services division;
- (2) the state parks division;
- (3) the forestry division which shall include a soil and water conservation bureau;

- (4) the energy conservation and management division;
- (5) the mining and minerals division; and
- (6) the oil conservation division.

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

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

### ANNOTATIONS

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

For game and fish, see Chapter 17 NMSA 1978.

For forestry, see Chapter 68 NMSA 1978.

For mines, see Chapter 69 NMSA 1978.

For oil conservation, see Chapter 70 NMSA 1978.

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

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

**Appropriations.** — Laws 2002, ch. 110, § 41, effective March 6, 2002, as amended by Laws 2003, ch. 429, § 139 appropriates \$960,000 from the capital projects fund to the energy, minerals and natural resources department for expenditure in fiscal years 2002 through 2007 to purchase fire engines and to make improvements at Eagle Nest Lake park.

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

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

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

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

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

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

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

State's liability for personal injuries from criminal attack in state park, 59 A.L.R.4th 1236.  
81A C.J.S. States § 147.

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

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

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

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

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

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

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

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

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

### **ANNOTATIONS**

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

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

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

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

**Appropriations.** — Laws 2003, ch. 385, § 13, effective April 8, 2003, appropriates \$25,000 from the general fund to the state parks division of the energy, minerals and natural resources department for the Mesilla Valley bosque park in Dona Ana county.

**State power not exclusive.** — The provisions of 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, U.S. , 123 S. Ct. 605, 154 L. Ed. 2d 528 (2002), cert. denied, U.S. , 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 [10-9-1 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 [9-5A-1 to 9-5A-7 NMSA 1978]. He shall employ a chief to be the administrative head of each bureau. The chiefs and all subsidiary employees of the department shall be covered by the Personnel Act [10-9-1 NMSA 1978].

**History:** Laws 1987, ch. 234, § 7.

## **ANNOTATIONS**

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

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

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

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

B. coordinating and directing the provisions of the Alternative Fuel Conversion Act [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

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

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

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

**Alternative Fuel Conversion Act.** — The Alternative Fuel Conversion Act, referred to in Subsection B, was amended and renamed as the Alternative Fuel Acquisition Act by Laws 2002, chapter 32. See 13-1B-1 NMSA 1978 et seq.

### **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, contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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, contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

# ARTICLE 5B

## Youth Conservation Corps

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

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

**History:** Laws 1992, ch. 91, § 1.

### ANNOTATIONS

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

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

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

**History:** Laws 1992, ch. 91, § 2.

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

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

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

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

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

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

**History:** Laws 1992, ch. 91, § 3.

### **ANNOTATIONS**

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

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

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

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

**History:** Laws 1992, ch. 91, § 4.

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

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

- (1) the superintendent of public instruction or his designee;
- (2) the commissioner of public lands or his designee;

- (3) the secretary of energy, minerals and natural resources or his designee;
- (4) the secretary of the youth authority [children, youth, and families department] or his designee; and
- (5) five members of the general public appointed by the governor to reflect the geographic diversity of the state, one of whom is knowledgeable in the current policies of the United States forest service and one of whom is Native American.

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

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

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

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

**History:** Laws 1992, ch. 91, § 5.

## **ANNOTATIONS**

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

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

A. The commission may:

- (1) accept gifts, devise, grants and donations from others to carry out the provisions of the New Mexico Youth Conservation Corps Act [9-5B-1 to 9-5B-11 NMSA 1978];
- (2) request assistance and staff support from the department;
- (3) employ such personnel as necessary to carry out the provisions of the New Mexico Youth Conservation Corps Act;

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

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

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

B. The commission shall:

(1) adopt rules and regulations that are necessary for the proper administration of the New Mexico Youth Conservation Corps Act [9-5B-1 to 9-5B-11 NMSA 1978];

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

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

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

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

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

**History:** Laws 1992, ch. 91, § 6.

### **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.

### **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 [10-9-1 NMSA 1978]. Corps members shall be entitled to receive workers' compensation benefits provided by the commission.



**History:** Laws 1992, ch. 91, § 8.

### **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 his employment is entitled to receive as additional compensation five hundred dollars (\$500) or a one thousand dollar (\$1,000) educational tuition voucher at a New Mexico 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.

### **ANNOTATIONS**

**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 [9-5B-1 to 9-5B-11 NMSA 1978]. Any interest accruing to the fund shall remain in the fund. Money in the fund shall not revert at the end of a fiscal year.

B. The fund shall be administered by the department. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the chairman of the commission or his designee for the

purpose of carrying out the provisions of the New Mexico Youth Conservation Corps Act.

**History:** Laws 1992, ch. 91, § 10.

### **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.

## **ARTICLE 6**

### **Department of Finance and Administration**

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

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

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

#### **ANNOTATIONS**

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

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

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

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

#### **ANNOTATIONS**

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

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

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

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

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

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

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

#### **ANNOTATIONS**

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

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

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

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

For public finances generally, see Chapter 6 NMSA 1978.

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

For state budgets, see 6-3-1 to 6-3-24 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 6-8-18 NMSA 1978.

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

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

**Appropriations.** — Laws 2002, ch. 110, § 50, effective March 6, 2002, appropriates \$666,666 from the capital projects fund to the department of finance and administration for expenditure in fiscal years 2002 through 2007 to provide funding to make energy-efficient improvements to dwellings owned or occupied by low-income persons.

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

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

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

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

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

### **ANNOTATIONS**

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

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

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

## ANNOTATIONS

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

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

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

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

## ANNOTATIONS

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

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

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

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

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

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

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

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

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

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

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

(8) prepare an annual budget of the department;

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

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

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

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

(10) appoint, with the governor's consent, one "deputy secretary," and, for each division and office, a "director." These appointed positions are exempt from the provisions of the Personnel Act [10-9-1 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 6-3-24 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.

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

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

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

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

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

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

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



G. shall confer with the state budget division of the department of finance and administration in developing comprehensive plans to assure coordination of planning and budgeting functions;

H. shall coordinate the state clearinghouse review process;

I. shall develop a status of the state report;

J. shall review and coordinate comment by state agencies on draft environmental impact statements;

K. shall provide community development block grant technical assistance to local governments;

L. shall administer, in consultation with and upon advice and direction from the community development block grant policy committee, the program for the state community development block grant program;

M. shall serve as staff to the New Mexico Association of Regional Councils;

N. shall maintain a state planning library; and

O. shall provide planning assistance to county and multicounty districts relative to application by such districts for financial assistance and for regional plan development.

**History:** Laws 1983, ch. 296, § 7.

#### **ANNOTATIONS**

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

#### **9-6-6 to 9-6-11. Repealed.**

History: Laws 2004, ch. 25, § 53.

#### **ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 25, § 53 repealed Sections 9-9-6 to 9-6-11 NMSA 1978, effective May 19, 2004, relating to the office of cultural affairs. For provisions of former sections, see 2003 Replacement Pamphlet.

#### **9-6-6 to 9-6-11. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 25, § 53 repealed Sections 9-9-6 to 9-6-11 NMSA 1978, effective May 19, 2004, relating to the office of cultural affairs. For provisions of former sections, see 2003 Replacement Pamphlet.

## **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, contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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, contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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, contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 makes the act effective immediately. Approved April 4, 2003.

## **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 [Chapter 9, Article 7 NMSA 1978]:

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 [9-7-1 NMSA 1978] 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 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.

**The 2004 amendment**, effective May 19, 2004, added the last sentence.

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

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

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

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

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

#### **ANNOTATIONS**

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

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

For health and hospital records, see 14-6-1, 14-6-3 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 duties with regard to meat inspection, see 25-3-6 NMSA 1978 et seq.

For controlled substances, see 30-31-1 to 30-31-42 NMSA 1978.

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

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

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

**Appropriations.** — Laws 2003, ch. 385, § 9, effective April 8, 2003, appropriates \$100,000 from the general fund to the department of health to purchase medical and operational equipment for the Roosevelt county special hospital district in Roosevelt county.

### **9-7-4.1. Comprehensive strategic plan for health.**

A. The department, in conjunction with the New Mexico health policy commission and other state agencies, pursuant to Section 9-7-11.1 NMSA 1978, shall develop a comprehensive strategic plan for health that emphasizes prevention, personal responsibility, access and quality.

B. The department shall publish the comprehensive strategic plan for health by July 1, 2004 and July 1 of subsequent even-numbered years. By July 1 of odd-numbered years, the department shall review and update or amend the plan in response to changes and developments.

C. The department shall include the legislature, 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 state agency on aging [aging and long-term services department], pharmaceutical manufacturers and other stakeholders in its development of the comprehensive strategic plan for health 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 [10-15-1.1 NMSA 1978].

D. The department shall consult with the governments of Indian nations, tribes and pueblos located wholly or partially within New Mexico to include Indian nations, tribes and pueblos in the development of the comprehensive strategic plan for health.

E. The department shall report its findings, recommendations and goals in its biennial comprehensive strategic plan for health. The plan shall address the following areas and others that the governor and the legislature may from time to time request:

(1) a summary of the state's health care system that includes the financial, administrative and delivery structure in both the public and private sector;

(2) the diseases, injuries and risk factors for physical, behavioral and oral health that are the greatest cause of illness, injury or death in the state, with special attention to and recognition of the disparities that currently exist for different population groups;

(3) key indicators of and barriers to health care coverage and access, with specific emphasis on reducing the number of uninsured New Mexicans;

(4) the role of the department, other state agencies and the private sector in identifying strategies and interventions to provide health care coverage, access and quality;

(5) a continuum of care model that emphasizes prevention, early intervention and health promotion and that includes public health services, emergency medical services, primary care, acute care, specialized care, tertiary care and long-term care;

(6) health education, wellness, nutrition and exercise initiatives that emphasize personal health responsibility;

(7) workforce initiatives to identify, recruit and retain health care professionals;

(8) health care facility infrastructure, capacity, capitalization and financial viability in both the public and private sector;

(9) licensing, credentialing, oversight and tracking initiatives designed to improve health care quality and outcome measurements;

(10) programs, services and activities designed to address the needs of the disabled, elderly and other special-needs populations;



(11) anticipated demands and challenges on the health care system as the need for long-term care services increases;

(12) data and information addressing key health status and system indicators, statistics, benchmarks, targets and goals for the state and comparing it nationally, regionally and to other states of similar size and demographics; provided that individually identifiable health information and other proprietary information is protected as required by state or federal law; and

(13) planning and response to public health emergencies, including bioterrorism, pandemic flu, disease outbreaks and other situations that will require a coordinated response by the health care system.

History: Laws 2004, ch. 51, § 1.

### ANNOTATIONS

**Emergency clauses.** — Laws 2004, ch. 51, § 2 makes the act effective immediately. Approved March 3, 2004.

**Compiler's Note.** — Laws 2004, ch. 23, § 13 provides that all references in law to the state agency on aging shall be deemed references to the aging and long-term services department.

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

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

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

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

### ANNOTATIONS

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

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

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

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

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

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

(1) except as otherwise provided in the Department of Health Act [Chapter 9, Article 7 NMSA 1978], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

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

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

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

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for 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) conduct quality assurance and quality improvement activities;

(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 [10-9-1 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 he deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of those bonds.

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

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

(1) he shall arrange with school districts for the enrollment of all school-age residents of institutions under his authority who have been evaluated and recommended for placement in a public school according to the provisions of the Department of Health Education Act [Chapter 9, Article 7 NMSA 1978]. He shall notify the superintendent of public instruction prior to public school enrollment of any school-age resident under his authority; and

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

(a) using the facilities and personnel of the department;

(b) contracting with a school district for the provision of educational services;  
or

(c) using a combination of Subparagraphs (a) and (b) of this paragraph.

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 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 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:** 1978 Comp., § 9-7-6, enacted by Laws 1977, ch. 253, § 7; 1978, ch. 211, § 5; 1991, ch. 25, § 18; 2001, ch. 119, § 1.

## 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 6-3-24 NMSA 1978.

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

**The 1991 amendment**, effective March 29, 1991, substituted "the Department of Health Act" for "this act" in Paragraph (1) of Subsection B; deleted former Subsection D, which read "Where functions of departments overlap or a function assigned to one department could be better performed by another department, a secretary may recommend appropriate legislation to the next session of the legislation for its approval"; redesignated former Subsections E and F as present Subsections D and E; substituted "22-1-2 NMSA 1978" for "77-1-2 NMSA 1953" and "43-1-3 MNSA 1978" for "34-2A-2 NMSA 1953" in the introductory paragraph of Subsection D; in Paragraph (1) of Subsection D, substituted "Department of Health Education Act" for "Health and Environment Department Act" in the first sentence and deleted "state" preceding "superintendent" in the second sentence; and made stylistic changes throughout Subsection B.

**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.

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

**As sections not in conflict with Personnel Act in defining exempt positions.** — In defining exempt positions only for the secretary and division heads of the department, 9-1-4 NMSA 1978 and Subsection B(9) (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.** — See 1978 Op. Att'y Gen. No. 78-7.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Health §§ 1, 3, 4, 9 to 16.

### **9-7-6.1. Behavioral health services; powers and duties of the department of health.**

Subject to appropriation, the department 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, 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 coordinating with the human services department and the children, youth and families department;

E. establish criteria for determining individual eligibility for behavioral health services; and

F. maintain a management information system in accordance with standards for reporting clinical and fiscal information.

History: Laws 1999, ch. 270, § 1; 2004, ch. 46, § 6.

### **ANNOTATIONS**

**The 2004 amendment**, effective May 19, 2004, added Subsections C and D and redesignated former Subsections C and D as Subsections E and F.

**Cross references.** — For the Behavioral Health Capital Funding Act see § 6-26-1 NMSA 1978.

### **9-7-6.2. Contract eligibility.**

Subject to the provisions of Section 9-7-6.4 NMSA 1978, the department may enter into contracts for behavioral health services with municipalities, counties, state institutions of higher education, tribal or pueblo governments or organizations, regional provider service networks or private nonprofit or for-profit corporations authorized to do business in New Mexico.

History: Laws 1999, ch. 270, § 2; 2004, ch. 46, § 7.

## **ANNOTATIONS**

**The 2004 amendment**, effective May 19, 2004, added "Subject to the provisions of Section 9-7-6.4 NMSA 1978".

### **9-7-6.3. Rules.**

The department of health shall adopt rules pursuant to the State Rules Act [Chapter 14, Article 4 NMSA 1978] and the Department of Health Act [Chapter 9, Article 9 NMSA 1978] to implement the provision of behavioral health services.

**History:** Laws 1999, ch. 270, § 3.

### **9-7-6.4. Interagency behavioral health purchasing collaborative.**

A. There is created the "interagency behavioral health purchasing collaborative", consisting of the secretaries of human services, health, corrections, children, youth and families, finance and administration, labor, public education and transportation; the directors of the state agency on aging [aging and long-term services department], the administrative office of the courts, the New Mexico office of Indian affairs, the New Mexico mortgage finance authority, the governor's committee on concerns of the handicapped, the developmental disabilities planning council, the vocational rehabilitation 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 on-going 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, 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.

History: Laws 2004, ch. 46, § 8.

### ANNOTATIONS

**Effective dates.** — Laws 2004, ch. 46 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

**Compiler's Note.** — Laws 2004, ch. 23, § 13 provides that all references in law to the state agency on aging shall be deemed references to the aging and long-term services department.

### **9-7-7. Organizational units of department; powers and duties specified by law; access to information.**

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, and he shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 9-7-6 NMSA 1978. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law.

**History:** 1978 Comp., § 9-7-7, enacted by Laws 1977, ch. 253, § 8; 1991, ch. 25, § 19.

### ANNOTATIONS

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

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



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

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

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

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

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

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

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

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

For food generally, see Chapter 25 NMSA 1978.

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

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

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

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

**The 1991 amendment**, effective March 29, 1991, substituted "9-7-6 NMSA 1978" for "7 of the Health and Environment Department Act" at the end of the second sentence.

### **9-7-8. Directors.**

The secretary shall appoint with the approval of the governor "directors" of divisions established within the department. The positions so appointed are exempt from the Personnel Act [10-9-1 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(9) 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 [this article]. He shall employ a "chief" to be the administrative head of each bureau. The chief and all subsidiary employees of the department shall be covered by the Personnel Act [10-9-1 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.

## **9-7-10. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 328, § 2 repeals 9-7-10 NMSA 1978, as amended by Laws 1983, ch. 177, § 1, relating to creation of the behavioral health services division, effective June 19, 1987. For provisions of the former section, see the 1983 Replacement Pamphlet.

## **9-7-10.1. Rehabilitation centers.**

There are created within the department of health the "northern New Mexico rehabilitation center" and the "southern New Mexico rehabilitation center". The centers shall be at Las Vegas and Roswell, respectively, and shall provide the citizens of New Mexico with physical therapy, speech and hearing diagnoses and therapy and family counseling services in conjunction with such therapy and in cooperation with related programs of other governmental and nonprofit entities. Such therapy and service shall be provided without regard to eligibility for federally funded vocational rehabilitation services.

**History:** 1978 Comp., § 9-7-10.1, enacted by Laws 1983, ch. 156, § 1; 1987, ch. 328, § 1; 1991, ch. 25, § 22.

### **ANNOTATIONS**

**The 1991 amendment**, effective March 29, 1991, substituted "department of health" for "health and environment department" in the first sentence.

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

A. Advisory committees may be created. Advisory means furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or to comply with federal or private funding requirements and does not extend to administering a program or function or setting policy unless specified by law. Advisory committees shall be appointed in accordance with the provisions of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978].

B. All members of advisory committees appointed under the authority of this section shall receive as their sole remuneration for services as a member those amounts authorized under the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** 1978 Comp., § 9-7-11, enacted by Laws 1977, ch. 253, § 12; 1991, ch. 25, § 23.

## ANNOTATIONS

**The 1991 amendment**, effective March 29, 1991, made minor stylistic changes throughout Subsection A.

### **9-7-11.1. Findings and purpose.**

A. The legislature finds that good health is among our most cherished desires. To achieve optimal health requires both individual and collective responsibility and action, and therefore, state government must assume a leadership role by establishing and implementing policies in all aspects of health. In order to fulfill its proper leadership obligation within public resource constraints, the state must perform a variety of carefully tailored roles in concert with individuals, the private sector and local, federal and tribal governments.

B. The legislature also finds that health care requires a growing portion of the state's public and private resources and impacts a broad segment of the state's economy; a need, therefore, exists to establish an entity for research, guidance and recommendations on health policy and planning issues.

C. The purpose of the New Mexico health policy commission is to provide a forum for the discussion of complex and controversial health policy and planning issues and for the creative exploration of ideas, issues and problems surrounding health policy and planning, including the interrelations with education, the environment and economic well-being.

D. It is the policy of the state of New Mexico to promote optimal health; to prevent disease, disability and premature death; to improve the quality of life; and to assure that basic health services are available, accessible, acceptable and culturally appropriate, regardless of financial status. This policy shall be realized through the following organized efforts:

- (1) education, motivation and support of the individual in healthy behavior;
- (2) protection and improvement of the physical and social environments;
- (3) promotion of health services for early diagnosis and prevention of disease and disability; and
- (4) provisions of basic treatment services needed by all New Mexicans.

**History:** Laws 1991, ch. 139, § 1.

### **9-7-11.2. New Mexico health policy commission created; composition; duties.**

A. There is created the "New Mexico health policy commission", which is administratively attached to the department of finance and administration.

B. The New Mexico health policy commission shall consist of eight members appointed by the governor with the advice and consent of the senate to reflect the ethnic, economic, geographic and professional diversity of the state. No member of the commission shall have a pecuniary or fiduciary interest in the health services industry for three years preceding his appointment to the commission. Two members shall be appointed for one-year terms, three members shall be appointed for two-year terms, three members shall be appointed for three-year terms and all subsequent appointments shall be made for three-year terms.

C. The New Mexico health policy commission shall meet at the call of the chairman and shall meet not less than quarterly. The chairman shall be elected from among the members of the commission. Members of the New Mexico health policy commission shall not be paid but shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act [10-8-1 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.

### **ANNOTATIONS**

**The 1994 amendment**, effective March 4, 1994, deleted "health and environment" following "attached to the", and inserted "of finance and administration", in Subsection

A; inserted "and shall meet", and deleted "and not more than once a month" following "quarterly", in the first sentence of Subsection C; rewrote Subsection D and inserted Paragraphs D(1) to D(3); substituted "monitor the implementation of" for "implement" in Paragraph E(2); inserted "and health care personnel" and made a minor stylistic change in Paragraph E(3); and rewrote Paragraph E(4), which formerly read: "identify the elements necessary to coordinate an effective system to meet the state's need for health care personnel".

**The 2004 amendment**, effective May 19, 2004, added Paragraph (11) of Subsection E.

### **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 board of medical examiners; the board of nursing; other health care provider boards; the regulation and licensing department; the insurance division of the public regulation commission; the human services 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; and other third-party payers as well as health care advocates and members of the public.

D. The New Mexico health policy commission, together with the New Mexico board of medical examiners 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.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 235 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 30, 2003, 90 days after adjournment of the legislature.

**Temporary provisions.** — Laws 2003, ch. 235 § 1, effective June 30, 2003, provides that: The legislature finds that licensed professionals in New Mexico, particularly those in the health care field are severely burdened by multiple layers of mandatory credentialing obligations, costing them, their patients and third-party payers needless expense and wasted time. Further, the legislature notes that New Mexico's health care licensure provisions may be contributing to harmful delays in access to health care throughout the state, particularly in areas with acute professional shortages. The legislature believes that efforts begun pursuant to House Joint Memorial 61 of the second session of the forty-fifth legislature and the continued cooperation among respective licensing boards, the regulation and licensing department, various statewide professional associations and societies, insurers and national accrediting and standard setting organizations will produce a system satisfactory to all concerned while maintaining the primary goal of ensuring the health and safety of New Mexico residents.

## **9-7-12. Cooperation with the federal government; authority of secretary; single state agency status.**

A. The department is authorized to cooperate with the federal government in the administration of health programs in which financial or other participation by the federal government is authorized or mandated under state or federal laws, regulations, rules or orders. The secretary may enter into agreements with agencies of the federal government to implement health programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor or the secretary may by appropriate order designate the department or any organizational unit of the department as the single state agency for the administration of any health program when such designation is a condition of federal financial or other participation in the program under applicable federal law, regulation, rule or order. Whether or not a federal condition exists, the governor may designate the department or any organizational unit of the department as the single state agency for the administration of any health program. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

**History:** 1978 Comp., § 9-7-12, enacted by Laws 1977, ch. 253, § 13; 1991, ch. 25, § 24.

### **ANNOTATIONS**

**The 1991 amendment**, effective March 29, 1991, deleted "and environmental" following "health" in the first sentence in Subsection A and deleted "or environmental" following

"health" in the second sentence in Subsection A and in the first and second sentences in Subsection B.

### **9-7-13. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 25, § 36 repeals 9-7-13 NMSA 1978, as enacted by Laws 1977, ch. 253, § 76, relating to exemptions of the environmental improvement board from the authority of the secretary of health and environment, effective March 29, 1991. For provisions of former section, see 1989 Replacement Pamphlet.

### **9-7-14, 9-7-15. Recompiled.**

#### **ANNOTATIONS**

**Recompilations.** — In 1991, 9-7-14 and 9-7-15 NMSA 1978, relating to exemptions from the authority of the secretary for the water quality control commission and the occupational health and safety review commission, respectively, were recompiled as 9-7A-13 and 9-7A-14 NMSA 1978.

### **9-7-16. Rate equalization for community-based service contractors.**

The department of health shall take all measures reasonably necessary to ensure that any funds appropriated to the developmental disabilities division of the department of health for rate equalization for community contract agencies are used to increase contractor payments to provide equitable rates for community contract agencies based upon the variable cost reimbursement study performed for the department.

**History:** Laws 1992, ch. 82, § 1.

### **9-7-17. Substance abuse education fund.**

There is created the "substance abuse education fund" which shall be controlled by the agency. All money collected or received under the state laws for the purpose of substance abuse education shall be paid over to the state treasurer to the credit of the substance abuse education fund, and the fund shall not be transferred to another fund. The money in the fund shall be used for the purpose of providing additional funding for substance abuse educational programs in the local school districts. The drug abuse agency, in coordination with the state department of public education and local school boards, shall:

A. develop and provide funds for substance abuse education curricula and materials for the public school system;



B. provide substance abuse educational programs to public school staff, parents and students; and

C. assist local schools in developing student and faculty support and intervention groups.

**History:** 1978 Comp., § 26-2-4.1, enacted by Laws 1987, ch. 265, § 5; 1989, ch. 324, § 20; 1978 Comp., § 26-2-4.1, recompiled as 1978 Comp., § 9-7-17 by Laws 1999, ch. 270, § 9.

## ANNOTATIONS

**The 1989 amendment**, effective April 7, 1989, deleted "including all earned income therefrom" following "and the fund" in the second sentence.

**Recompilations.** — Laws 1999, ch. 270, § 9 recompiles 26-2-4.1 NMSA 1978, relating to the substance abuse education fund, as 9-7-17 NMSA 1978, effective July 1, 1999.

## ARTICLE 7A Department of Environment

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

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

**History:** Laws 1991, ch. 25, § 1.

### 9-7A-2. Definitions.

As used in the Department of Environment Act [9-7A-1 to 9-7A-12 NMSA 1978]:

A. "board" means the environmental improvement board;

B. "department" means the department of environment created under the Department of Environment Act; and

C. "secretary" means the secretary of environment.

**History:** Laws 1991, ch. 25, § 2.

### 9-7A-3. Purpose.

The purpose of the Department of Environment Act [9-7A-1 to 9-7A-12 NMSA 1978] is to establish a single department to administer the laws and exercise the functions

relating to the environment formerly administered and exercised by the health and environment department.

**History:** Laws 1991, ch. 25, § 3.

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

There is created in the executive branch the "department of environment". The department shall be a cabinet department and shall include, but not be limited to, the programs and functions of the environmental improvement division. All references in the law to the environmental improvement agency or the environmental improvement division of the health and environment department shall be construed to mean the department. All references to the director of the environmental improvement division shall be construed to mean the secretary. The department shall consist of the staff of the environmental improvement division and such other powers, duties and personnel of the former health and environment department as may be assigned by the governor pursuant to executive order.

**History:** Laws 1991, ch. 25, § 4.

## **ANNOTATIONS**

**Cross references.** — For environmental improvement generally, see Chapter 74 NMSA 1978.

For environmental improvement department, see 74-1-6 NMSA 1978 et seq.

For Rural Infrastructure Act, see 75-1-1 NMSA 1978 et seq.

**Appropriations.** — Laws 2002, ch. 110, § 42, effective March 6, 2002, appropriates \$100,000 from the capital projects fund to the department of environment for expenditure in fiscal years 2002 to 2007 for improvements to the water systems of the Dilia and Upper Dilia mutual domestic water consumers associations.

Laws 2003, ch. 385, § 7, effective April 8, 2003, appropriates \$923,000 from the general fund to the department of environment for various purposes.

### **9-7A-5. Secretary of environment; appointment.**

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

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

**History:** Laws 1991, ch. 25, § 5.

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

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

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

(1) except as otherwise provided in the Department of Environment Act [9-7A-1 to 9-7A-12 NMSA 1978], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

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

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

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

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

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

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

(8) prepare an annual budget of the department;

(9) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act [10-9-1 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.

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

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, and he shall retain the final decision-making authority and responsibility for the administration of any laws as provided in Subsection B of Section 6 [9-7A-6 NMSA 1978] of the Department of Environment Act. The department shall have access to all records, data and information of other state departments,

agencies and institutions, including its own organizational units, not specifically held confidential by law.

**History:** Laws 1991, ch. 25, § 7.

### **9-7A-8. Directors.**

The secretary shall appoint with the approval of the governor "directors" of divisions established within the department. The positions so appointed are exempt from the Personnel Act [10-9-1 NMSA 1978].

**History:** Laws 1991, ch. 25, § 8.

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

The secretary shall establish within each division such "bureaus" as he deems necessary to carry out the provisions of the Department of Environment Act [9-7A-1 to 9-7A-12 NMSA 1978]. He shall employ a "chief" to be the administrative head of each bureau. The chief and all subsidiary employees of the department shall be covered by the Personnel Act [10-9-1 NMSA 1978] unless otherwise provided by law.

**History:** Laws 1991, ch. 25, § 9.

### **9-7A-10. Advisory committees.**

A. Advisory committees may be created. "Advisory" means furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or to comply with federal or private funding requirements and does not extend to administering a program or function or setting policy unless specified by law. Advisory committees shall be appointed in accordance with the provisions of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978].

B. All members of advisory committees appointed under the authority of this section shall receive as their sole remuneration for services as a member those amounts authorized under the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** Laws 1991, ch. 25, § 10.

### **9-7A-11. Cooperation with the federal government; authority of secretary; single state agency status.**

A. The department is authorized to cooperate with the federal government in the administration of environmental programs in which financial or other participation by the federal government is authorized or mandated under state or federal laws, regulations,

rules or orders. The secretary may enter into agreements with agencies of the federal government to implement environmental programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor or the secretary may by appropriate order designate the department or any organizational unit of the department as the single state agency for the administration of any environmental program when that designation is a condition of federal financial or other participation in the program under applicable federal law, regulation, rule or order. Whether or not a federal condition exists, the governor may designate the department or any organizational unit of the department as the single state agency for the administration of any environmental program. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

**History:** Laws 1991, ch. 25, § 11.

### **9-7A-12. Environmental improvement board; exemptions from authority of secretary.**

The environmental improvement board shall receive staff support from the department. All powers, duties and responsibilities of the environmental improvement board under Sections 25-1-1 through 25-1-14, 25-2-1 through 25-2-19, 25-5-1 through 25-5-9, 50-9-1, through 50-9-25, 74-1-1 through 74-1-11, 74-2-1 through 74-2-17, 74-3-1 through 74-3-16, 74-4-1 through 74-4-13, 74-4A-1 through 74-4A-19, 74-6B-1 through 74-6B-11, 74-7-1 through 74-7-8, 7-8-1 through 7-8-3, 74-9-1 through 74-9-42 and 75-1-1 through 75-1-6 NMSA 1978 are explicitly exempt from the authority of the secretary under the provisions of Subsection B of Section 6 [9-7A-6 NMSA 1978] of the Department of Environment Act.

**History:** Laws 1991, ch. 25, § 12.

### **ANNOTATIONS**

**Compiler's notes.** — Section 74-6B-11 NMSA 1978 was repealed in 1993.

Sections 7-8-1 to 7-8-3 NMSA 1978 were repealed in 1997. Comparable provisions may be found in Chapter 7, Article 8A NMSA 1978.

### **9-7A-13. Water quality control commission; exemptions from authority of secretary of environment.**

The water quality control commission shall receive staff support from the department of environment. All powers, duties and responsibilities of the water quality control commission under Sections 47-6-11, 74-6-3 through 74-6-8, 74-6-10 and 74-6-12

NMSA 1978 are hereby explicitly exempted from the authority of the secretary under provisions of Subsection B of Section 6 [9-7A-6 NMSA 1978] of the Department of Environment Act.

**History:** 1978 Comp., § 9-7-14, enacted by Laws 1977, ch. 253, § 77; recompiled as 1978 Comp., § 9-7A-13; 1991, ch. 25, § 25.

### ANNOTATIONS

**The 1991 amendment**, effective March 29, 1991, deleted "health and" preceding "environment" in the catchline; substituted "department of environment" for "environmental improvement division of the health and environment department" in the first sentence; and rewrote the second sentence, which read "All powers, duties and responsibilities of the water quality control commission under Sections 47-6-11, 61-30-4, 61-30-5, 61-30-7 through 61-30-9, 74-6-3 through 74-6-8, 74-6-10 and 74-6-12 NMSA 1978 are hereby explicitly exempted from the authority of the secretary of health and environment under provisions of Subsection B of Section 7 of the Health and Environment Department Act".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of statute prescribing standard of purity of water furnished for human consumption, 6 A.L.R. 475.

Validity of statute, ordinance or other measure involving chemical treatment of public water supply, 43 A.L.R.2d 453.

### **9-7A-14. Occupational health and safety review commission; exemptions from authority of secretary of environment.**

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

**History:** 1978 Comp., § 9-7-15, enacted by Laws 1977, ch. 253, § 78; recompiled as 1978 Comp., § 9-7A-14; 1991, ch. 25, § 26.

### ANNOTATIONS

**The 1991 amendment**, effective March 29, 1991, deleted "health and" preceding "environment" in the catchline; in the first sentence, substituted "receive" for "review" and "department of environment" for "environmental improvement division of the health and environment department"; and rewrote the second sentence, which read "All powers, duties and responsibilities of the occupational health and safety review commission under 50-9-9, 50-9-17 and 59-9-24 NMSA 1978 are hereby explicitly

exempted from the authority of the secretary of health and environment under provisions of Subsection B of Section 7 of the Health and Environment Department Act".

### **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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

## **ARTICLE 8**

### **Human Services Department**

#### **9-8-1. Short title.**

Sections 1 through 14 [9-8-1 to 9-8-12 NMSA 1978] of this act may be cited as the "Human Services Department Act".

**History:** 1978 Comp., § 9-8-1, enacted by Laws 1977, ch. 252, § 1.

#### **ANNOTATIONS**

**Compiler's notes.** — Sections 5 and 14 of the Human Services Department Act (Laws 1977, ch. 252, §§ 5 and 14) enact temporary provisions and have therefore not been compiled.

#### **9-8-2. Definitions.**

As used in the Human Services Department Act [9-8-1 to 9-8-12 NMSA 1978]:

A. "department" means the human services department created under the Human Services Department Act; and

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

**History:** 1978 Comp., § 9-8-2, enacted by Laws 1977, ch. 252, § 2.

### **9-8-3. Purpose.**

The purpose of the Human Services Department Act [9-8-1 to 9-8-12 NMSA 1978] is to establish a single, unified department to administer laws and exercise functions relating to human services and formerly administered and exercised by the administrative services unit, the state welfare and social services agencies of the health and social services department and the committee on children and youth.

**History:** 1978 Comp., § 9-8-3, enacted by Laws 1977, ch. 252, § 3; 1979, ch. 203, § 7; 1979, ch. 204, § 1; 1979, ch. 280, § 1; 1981, ch. 88, § 1.

### **9-8-4. Department established.**

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

- A. the income support division; and
- B. the social services division.

**History:** 1978 Comp., § 9-8-4, enacted by Laws 1977, ch. 252, § 4; 1981, ch. 88, § 2.

## **ANNOTATIONS**

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

For public assistance generally, see Chapter 27 NMSA 1978.

For human rights generally, see Chapter 28 NMSA 1978.

For veterans services, see 28-13-1 to 28-13-16 NMSA 1978.

For delinquent, abused and neglected children, see 32A-2-1 to 32A-2-32 and 32A-4-1 to 32A-4-33 NMSA 1978.

For adoption generally, see 32A-5-1 to 32A-5-45 NMSA 1978.

For Mandatory Medical Support Act, see 40-4C-1 NMSA 1978 et seq.

**Appropriations.** — Laws 2002, ch. 106, § 2, effective March 6, 2002, appropriates \$2,000,000 from the temporary assistance for needy families block grant to the income support division of the human services department to be transferred to the development training fund for a program providing training to furnish qualified manpower resources

for certain new or expanding industries and businesses in the state. Any unexpended or unencumbered balance remaining at the end of the fiscal year shall not revert.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 79 Am. Jur. 2d Welfare Laws §§ 45 to 82.

Construction and application of state social security or unemployment compensation as affected by terms of Federal Social Security Act or judicial or administrative rulings thereunder, 139 A.L.R. 892.

43 C.J.S. Infants §§ 31, 32.

### **9-8-5. Secretary of human services; appointment.**

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

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

**History:** 1978 Comp., § 9-8-5, enacted by Laws 1977, ch. 252, § 6.

### **ANNOTATIONS**

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

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

### **9-8-6. Secretary; duties and general powers.**

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

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

(1) except as otherwise provided in the Human Services Department Act [9-8-1 NMSA 1978], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

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

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

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

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

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

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

(8) prepare an annual budget of the department;

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

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

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

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

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act [10-9-1 NMSA 1978]. Persons appointed to these positions shall serve at the pleasure of the secretary, except as provided in Section 9-8-9 NMSA 1978;

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

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

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

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

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

F. In the event the secretary anticipates that adoption, amendment or repeal of a rule or regulation will be required by a cancellation, reduction or suspension of federal funds or order by a court of competent jurisdiction:

(1) if the secretary is notified by appropriate federal authorities at least sixty days prior to the effective date of such cancellation, reduction or termination of federal funds, the department is required to promulgate regulations through the public hearing process to be effective on the date mandated by the appropriate federal authority; or

(2) if the secretary is notified by appropriate federal authorities or court less than sixty days prior to the effective date of such cancellation, reduction or suspension of federal funds or court order, the department is authorized without a public hearing to promulgate interim rules or regulations effective for a period not to exceed ninety days. Interim regulations 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 or regulations, the department shall give notice of the public hearing on the final rules or regulations in accordance with Subsection E of this section.

G. If the secretary certifies to the secretary of finance and administration and gives contemporaneous notice of such certification through the human services register that the department has insufficient state funds to operate any of the programs it administers and that reductions in services or benefit levels are necessary, the secretary may engage in interim rulemaking. Notwithstanding any provision to the contrary in the State Rules Act [14-4-1 NMSA 1978], interim rulemaking shall be conducted pursuant to Subsection E of this section, except:

- (1) the period of notice of public hearing shall be fifteen days;
- (2) the department shall also send individual notices of the interim rulemaking and of the public hearing to affected providers and beneficiaries;
- (3) rules and regulations promulgated pursuant to the provisions of this subsection shall be in effect not less than five days after the public hearing;
- (4) rules and regulations promulgated pursuant to the provisions of 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 and filed in accordance with the State Rules Act.

H. At the time of the promulgation of the interim rules or regulations, the department shall give notice of the public hearing on the final rules or regulations in accordance with Subsection E of this section.

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 and regulations shall be filed in accordance with the State Rules Act.

History: 1978 Comp., § 9-8-6, enacted by Laws 1977, ch. 252, § 7; 1981, ch. 133, § 1; 1989, ch. 82, § 1; 1993, ch. 342, § 2; 2004, ch. 46, § 10.

## 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 6-3-24 NMSA 1978.

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

For abandonment or abuse of a child, see 30-6-1 NMSA 1978.

**The 1993 amendment**, effective April 8, 1993, made a stylistic change near the beginning of Subsection F and added present Subsection G, redesignating former Subsection G as Subsection H.

**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.

**Publication in New Mexico Register.** — Publication of a notice, proposed rule, or adopted rule in the New Mexico Human Services Register does not fulfill the Human Services Department's duty to publish materials required by the New Mexico Register. 1993 Op. Att'y Gen. No. 93-2.

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

**Law reviews.** — For annual survey of New Mexico law relating to administration law, see 12 N.M.L. Rev. 1 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Admissibility of records or report of welfare department or agency relating to payment to or financial condition of particular person, 42 A.L.R.2d 752.

Confidentiality of records as to recipients of public welfare, 54 A.L.R.3d 768.

### **9-8-7. Organizational units of department; powers and duties specified by law; access to information.**

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary and he shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 7 [9-8-6 NMSA 1978] of the Human Services Department Act. The department shall have access to all records, data and information of other state departments,

agencies and institutions, including its own organizational units not specifically held confidential by law.

**History:** 1978 Comp., § 9-8-7, enacted by Laws 1977, ch. 252, § 8.

### **9-8-8. Administratively attached agencies.**

The commission on the status of women is administratively attached to the human services department in accordance with the Executive Reorganization Act [9-1-1 NMSA 1978].

**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.

#### **ANNOTATIONS**

**Cross references.** — For human rights commission, see 28-1-3 to 28-1-14 NMSA 1978.

For commission on status of women, see 28-3-1 to 28-3-11 NMSA 1978.

For state agency on aging, see 28-4-4 to 28-4-9 NMSA 1978.

For office of Indian affairs, see 28-12-4 to 28-12-9 NMSA 1978.

**2004 amendments.** — Laws 2004, ch. 18, § 16, Laws 2004, ch. 23, § 12 and Laws 2004, ch. 24, § 16, effective May 19, 2004, enact identical amendments to Section 9-8-8 NMSA 1978 deleting 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 [10-9-1 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 also 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 he deems necessary to carry out the provisions of the Human Services Department Act [9-8-1 to 9-8-12 NMSA 1978.] He shall employ a chief to be administrative head of such bureau. The chief and all subsidiary employees of the department shall be covered by the Personnel Act [10-9-1 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.

### **ANNOTATIONS**

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

For public assistance generally, see Chapter 27 NMSA 1978.

For human rights generally, see Chapter 28 NMSA 1978.

For veterans services, see 28-13-1 to 28-13-16 NMSA 1978.

For delinquent, abused and neglected children, see 32A-2-1 to 32A-2-32 and 32A-4-1 to 32A-4-33 NMSA 1978.

For adoption generally, see 32A-5-1 to 32A-5-45 NMSA 1978.

For Mandatory Medical Support Act, see 40-4C-1 NMSA 1978 et seq.

### **9-8-11. Advisory committees.**

A. The governor shall appoint advisory committees to the department's income support division and the social services division. Creation of the advisory committees shall be in accordance with the provisions of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978]. If the existence of a committee, representational membership requirements or other matters are required or specified under any federal law, regulation, rule or order as a condition of receiving federal funding for a particular human services program administered by the department, the governor shall comply with such requirements in the creation of the advisory committee.

B. All members of the advisory committees appointed under the authority of this section shall receive as their sole remuneration for services as a member those amounts authorized under the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** 1978 Comp., § 9-8-11, enacted by Laws 1977, ch. 252, § 12; 1979, ch. 203, § 10; 1981, ch. 88, § 4.

## ANNOTATIONS

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

For public assistance generally, see Chapter 27 NMSA 1978.

For human rights generally, see Chapter 28 NMSA 1978.

For veterans services, see 28-13-1 to 28-13-16 NMSA 1978.

For delinquent, abused and neglected children, see 32A-2-1 to 32A-2-32 and 32A-4-1 to 32A-4-33 NMSA 1978.

For adoption generally, see 32A-5-1 to 32A-5-45 NMSA 1978.

For Mandatory Medical Support Act, see 40-4C-1 NMSA 1978 et seq.

### **9-8-12. Cooperation with the federal government; authority of secretary; single state agency status.**

A. The department is authorized to cooperate with the federal government in the administration of human services programs in which financial or other participation by the federal government is authorized or mandated under federal laws, regulations, rules or orders. The secretary may enter into agreements with agencies of the federal government to implement these human services programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor or the secretary may by appropriate order designate the department or any organizational unit of the department as the single state agency for the administration of any human services program when such designation is a condition of federal financial or other participation in the program under applicable federal law, regulation, rule or order. Whether or not a federal condition exists the governor may designate the department or any organizational unit of the department as the single state agency for the administration of any human services program. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

**History:** 1978 Comp., § 9-8-12, enacted by Laws 1977, ch. 252, § 13.

## ANNOTATIONS

**Transfer of personnel, appropriations, equipment, contracts, etc., and construction of references.** — Laws 1977, ch. 252, § 14, provides that all references in the law to the labor and industrial commission, the employment security commission, the committee on children and youth, the commission on aging and the veterans service commission mean the employment services division and the social services division, respectively, of the human services department.

The department of human services no longer contains an employment services division. See 9-8-4 NMSA 1978. The functions formerly performed by the employment security bureau of the division are now performed by the employment security division of the labor department. See 9-18-4 NMSA 1978. The functions formerly performed by the labor and industrial bureau of such division are now performed by the labor and industrial commission. See 50-1-1 NMSA 1978. The veterans' service bureau of the social services division has been replaced by the veterans' service commission. See 28-13-2 NMSA 1978. For the aging services bureau of the social services divisions and the state agency on aging, see 28-4-1 to 28-4-9 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Actions under 42 USCS § 1983 for violations of Adoption Assistance and Child Welfare Act (42 USCS §§ 620 et seq. and 670 et seq.), 93 A.L.R. Fed. 314.

81A C.J.S. States § 28.

### **9-8-13. Authority to conduct social services.**

A. The social services division of the department has authority to:

(1) establish, administer and supervise child welfare activities and social services to children, including but not limited to:

(a) children placed for adoption;

(b) homeless, dependent and neglected children;

(c) children in foster family homes or institutions because of dependency or neglect; and

(d) children who because of physical or mental defect may need such services;

(2) establish, administer and supervise social services for adults;

(3) license foster homes; and

(4) prescribe such regulations as it deems necessary to enforce and comply with this section and the Child Placement Agency Licensing Act [40-7A-1 to 40-7A-8 NMSA 1978] and inspect and require reports from all private institutions, boarding homes, shelter care homes, group homes, foster homes and other facilities providing assistance, care or other direct services to children or aged, blind, disabled or other dependent persons.

B. Nothing contained in this section or in the Human Services Department Act [9-8-1 to 9-8-12 NMSA 1978] shall authorize the secretary:

(1) to establish or prescribe standards or regulations for, or otherwise regulate programs for or services to children in group homes excepting only:

(a) the right to inspect and require reports from group homes as may be reasonably necessary to carry out any functions that may otherwise be specifically granted the department by law; and

(b) the right to require annual reports from group homes stating the name, address and telephone number of: 1) their principal offices; 2) their residential facilities for the care of children; 3) the membership of their boards of directors or other governing bodies if any; and 4) the persons in charge of the group homes and of their residential facilities; or

(2) to accept any delegation from or to exercise, perform or participate in any functions or duties, including any investigations or inspections, of the department of health or of its secretary that relate to group homes.

As used in this subsection, "group home" includes any home the principal function of which is to care for a group of children on a twenty-four-hour-a-day residential basis and that receives no funds as such directly from or through the department and that is a member of any state or national association that requires it to observe standards comparable to pertinent recognized state or national group home standards for the care of children, such as the New Mexico christian child care association, the national association of homes for children or the council on accreditation or that is certified by any such organization as complying with such standards.

**History:** 1953 Comp., § 12-34-23, enacted by Laws 1977, ch. 252, § 15; 1981, ch. 171, § 9; 1987, ch. 31, § 1; 1992, ch. 57, § 17.

## ANNOTATIONS

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

For responsibility of human services department concerning the abuse or neglect of individual children, see 9-8-14 NMSA 1978.

For public assistance generally, see Chapter 27 NMSA 1978.

For human rights generally, see Chapter 28 NMSA 1978.

For veterans services, see 28-13-1 to 28-13-16 NMSA 1978.

For delinquent, abused and neglected children, see 32A-2-1 to 32A-2-32 and 32A-4-1 to 32A-4-33 NMSA 1978.

For adoption generally, see 32A-5-1 to 32A-5-45 NMSA 1978.

For Mandatory Medical Support Act, see 40-4C-1 NMSA 1978 et seq.

**Repeals and reenactments.** — Laws 1977, ch. 252, § 15, repealed former 12-34-23, 1953 Comp., relating to the authority of the former health and social services department to conduct social services, and enacted a new 12-34-23. 1953 Comp. Former 12-34-23, 1953 Comp., was also repealed by Laws 1977, ch. 252, § 47.

**The 1992 amendment**, effective July 1, 1992, deleted former Subsection A(4), which read: "certify programs in the child care centers that receive funds from or through the human services department"; redesignated former Subsection A(5) as present Subsection A(4); deleted "child care centers" following "boarding homes" in Subsection A(4); substituted "department of health" for "health and environment department" in the first paragraph of Subsection B(2); and made minor stylistic changes throughout the section.

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

**Dismissals from human services department** were in accordance with law and supported by substantial evidence, which included the failure to promptly report the alleged sexual abuse of a child to the proper authorities. *Perkins v. Department of Human Servs.*, 106 N.M. 651, 748 P.2d 24 (Ct. App. 1987).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Communications to social worker as privileged, 50 A.L.R.3d 563.

Power of court or other public agency to order medical treatment for child over parental objections not based on religious grounds, 97 A.L.R.3d 421.

## **9-8-14. Responsibility; abuse or neglect.**

Nothing contained in Sections 9-8-13 or 27-1-3 NMSA 1978 shall affect the responsibility or authority of the human services department as set forth in the Children's Code [32A-1-1 NMSA 1978] concerning the abuse or neglect of individual children.

**History:** Laws 1987, ch. 31, § 4.

## **ARTICLE 9**

### **Military Affairs**

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

This act may be cited as the "Military Affairs Act".

**History:** 1978 Comp., § 9-9-1, enacted by Laws 1977, ch. 258, § 1.

#### **ANNOTATIONS**

**Meaning of "this act".** — The words "this act" refer to Laws 1977, ch. 258, which enacted this article and amended and added other provisions. For disposition of Laws 1977, ch. 258, in NMSA 1978, see the Table of Disposition of Acts in Volume 14.

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

The purpose of the Military Affairs Act [9-9-1 NMSA 1978] is to transfer to the adjutant general the administration of all laws and the exercise of all functions formerly exercised by the New Mexico department of civil air patrol.

**History:** 1978 Comp., § 9-9-2, enacted by Laws 1977, ch. 258, § 2.

#### **ANNOTATIONS**

**Cross references.** — For civil air patrol division, see 20-7-1, NMSA 1978.

#### **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 [9-9-1 NMSA 1978]. 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 [10-9-1 NMSA 1978].

**History:** 1978 Comp., § 9-9-3, enacted by Laws 1977, ch. 258, § 4.

#### **ANNOTATIONS**

**Cross references.** — For division of office of military affairs, see 12-10-3, 20-1-1 NMSA 1978.

For adjutant general as head of civil emergency preparedness division, see 12-10-3, 20-1-2 NMSA 1978.

## **ARTICLE 10**

### **Natural Resources Department**

(Repealed by Laws 1982, ch. 10, § 9; Laws 1987, ch. 234, § 84; Recompiled by Laws 1987, ch. 234, § 82.)

#### **9-10-1 to 9-10-9. Repealed.**

##### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repeals 9-10-1 to 9-10-9 NMSA 1978, as enacted by Laws 1977, ch. 254, §§ 1, 5-9, and 110 and Laws 1985, ch. 143, § 1 and amended by Laws 1982, ch. 10, §§ 1, 2, relating to the natural resources department, effective July 1, 1987. For provisions of the former sections, see the 1983 Replacement Pamphlet and the 1986 Supplement. For present comparable provisions, see 9-5A-1 to 9-5A-7 NMSA 1978.

#### **9-10-10. Recompiled.**

##### **ANNOTATIONS**

**Recompilations.** — Laws 1987, ch. 234, § 82, effective July 1, 1987, recompiled the former 9-10-10 NMSA 1978 as 75-5-1 NMSA 1978; but since Laws 1987, ch. 192, had already enacted Article 5 of Chapter 75, the section has been compiled as 75-6-1 NMSA 1978.

#### **9-10-11. Repealed.**

##### **ANNOTATIONS**

**Repeals.** — Laws 1982, ch. 10, § 9, repeals 9-10-11 NMSA 1978, as enacted by Laws 1977, ch. 254, § 112, relating to the exemption of the interstate stream commission from the authority of the secretary of natural resources, effective July 1, 1982. For provisions of former section, see the 1980 Replacement Pamphlet.

## **ARTICLE 11**

### **Taxation and Revenue Department**

### **9-11-1. Short title.**

Chapter 9, Article 11 NMSA 1978 may be cited as the "Taxation and Revenue Department Act".

**History:** 1978 Comp., § 9-11-1, enacted by Laws 1977, ch. 249, § 1; 1986, ch. 20, § 121.

### **9-11-2. Definitions.**

As used in the Taxation and Revenue Department Act [Chapter 9, Article 11 NMSA 1978]:

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 [Chapter 9, Article 11 NMSA 1978] is to establish a single, unified department to administer all laws and exercise all functions relating to taxation, revenue and vehicles charged to the department.

**History:** 1978 Comp., § 9-11-3, enacted by Laws 1977, ch. 249, § 3; 1987, ch. 268, § 2.

### **9-11-4. Department established.**

There is created in the executive branch the "taxation and revenue department". The department shall be a cabinet department and shall consist of, but not be limited to, an administrative services division and four program divisions as follows:

- A. the audit and compliance division;
- B. the property tax division;
- C. the revenue processing division; and



D. the motor vehicle division.

**History:** 1978 Comp., § 9-11-4, enacted by Laws 1977, ch. 249, § 4; 1986, ch. 20, § 122; 1987, ch. 268, § 3; 1998 (1st S.S.), ch. 10, § 2.

### **ANNOTATIONS**

**Cross references.** — For taxation generally, see Chapter 7 NMSA 1978.

For tax administration, see 7-1-1 to 7-1-82 NMSA 1978.

For oil and gas taxation, see 7-29-1 to 7-34-9 NMSA 1978.

For property taxes, see 7-35-1 to 7-38-93 NMSA 1978.

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

For motor transportation division of department of public safety, see 9-19-4 NMSA 1978.

For motor transportation and motor vehicle laws falling under jurisdiction of the Taxation and Revenue Department, see 65-1-1 to 66-8-140 NMSA 1978.

**The 1998 amendment**, effective July 1, 1998, deleted former Subsection E, which read: "the motor transportation division.", and made minor related and stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What is a property tax as distinguished from excise, license and other taxes, 103 A.L.R. 18.

Rights, in absence of express statute, of one governmental unit, or officers thereof, to compensation for collecting or disbursing special taxes or assessments levied by or owed to another governmental unit, 114 A.L.R. 1098.

81A C.J.S. States § 133.

### **9-11-5. Secretary of taxation and revenue; appointment.**

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

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

**History:** 1978 Comp., § 9-11-5, enacted by Laws 1977, ch. 249, § 6.

## **ANNOTATIONS**

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

For exemption of secretary from Personnel Act, see 9-11-10 NMSA 1978.

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

### **9-11-6. Secretary; duties and general powers.**

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

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

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

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

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

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

(5) purchase or lease personal property, purchase services and lease real property for use by the department as the secretary deems necessary, subject to approval of state agencies if any is required;

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

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

(8) prepare an annual budget of the department;

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

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

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

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

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act [10-9-1 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 Personnel Act to department employees, see 9-11-10 NMSA 1978.

For state budgets, see 6-3-1 to 6-3-24 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.** — See 1978 Op. Att'y Gen. No. 78-7.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 881 to 890.

Personal liability of public officer or sureties on his bond to property owner for failure to present or delay in presenting, checks given in payment of taxes, 77 A.L.R. 1034.

84 C.J.S. Taxation §§ 640 to 684.

### **9-11-6.1. Additional powers of secretary.**

In addition to the powers granted to the secretary in Section 9-11-6 NMSA 1978, the secretary is authorized to set, by regulation, after notification to the legislative finance committee, fees to cover the expense of providing additional services for the convenience of the public. Any fee for a service adopted under this section shall not be charged to or payable by any person not taking advantage of the service. Amounts collected pursuant to this section are appropriated to the department to defray the expense of providing the service.

**History:** 1978 Comp., § 9-11-6.1, enacted by Laws 1990, ch. 70, § 1.

### **9-11-6.2. Administrative regulations, rulings, instructions and orders; presumption of correctness.**

A. The secretary is empowered and directed to issue and file as required by law all regulations, rulings, instructions or orders necessary to implement and enforce any provision of any law the administration and enforcement of which the department, the secretary, any division of the department or any director of any division of the

department is charged, including all rules and regulations necessary by reason of any alteration of any such law. In order to accomplish its purpose, this provision is to be liberally construed.

B. Directives issued by the secretary shall be in form substantially as follows:

(1) regulations shall be written statements of the secretary of general application, interpreting and exemplifying the statutes [statutes] to which they relate;

(2) rulings shall be written statements of the secretary, of limited application to one or a small number of persons, interpreting the statutes to which they relate, ordinarily issued in response to a request for clarification of the consequences of a specified set of circumstances;

(3) orders shall be written statements of the secretary or a hearing officer or other delegate of the secretary to implement a decision after a hearing; and

(4) instructions shall be other written statements or directives of the secretary or secretary's delegate not dealing with the merits of any law but otherwise in aid of the accomplishment of the duties of the secretary.

C. To be effective, any ruling or regulation issued by the secretary shall be reviewed by the attorney general or other legal counsel of the department prior to being filed as required by law, and the fact of the review shall be indicated on the ruling or regulation.

D. To be effective, a regulation shall first be issued as a proposed regulation and filed for public inspection in the office of the secretary. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested parties may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published at least thirty days prior to the hearing date in a [sic] the New Mexico register and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. After the proposed regulation has been on file for not less than sixty days and a public hearing on the proposed action has been held by the secretary or a hearing officer designated by the secretary, the secretary may issue it as a final regulation by signing the regulation and filing the regulation in the manner required by law. The secretary shall not delegate the authority to sign regulations.

E. In addition to filing copies of regulations with the state records center as required by law, the secretary shall maintain in the office of the secretary a duplicate official set of current and superseded regulations, a set of current and superseded rulings and

such additional sets of those regulations and rulings as appear necessary, which duplicate or additional sets shall be available for inspection by the public, but superseded regulations need be maintained for no longer than ten years from the date of supersession.

F. The secretary shall develop and maintain a file of names and addresses of individuals and professional and industry groups having an interest in the promulgation of new, revised or proposed regulations. At convenient times, the secretary shall distribute to these persons all such regulations and all pertinent rulings, making such charges as will defray the expense incurred in their physical preparation and mailing. Such charges are appropriated to the department to defray the costs of preparing and distributing regulations and rulings.

G. Any regulation, ruling, instruction or order issued by the secretary or order or instruction issued by a hearing officer or other delegate of the secretary is presumed to be a proper implementation of the provisions of the laws that are charged to the department, the secretary, any division of the department or any director of any division of the department.

H. The extent to which regulations, rulings and orders will have retroactive effect shall be stated and, if no such statement is made, they will be applied prospectively only.

**History:** Laws 1995, ch. 31, § 3.

## ANNOTATIONS

**Bracketed material.** — The bracketed material in Paragraph B(1) and Subsection D was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

**Cross references.** — For state records center, see 14-3-8 NMSA 1978.

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

**Director (now secretary) has authority to issue regulations interpreting and exemplifying statutes** concerning the possession of nontaxable transaction certificates and he also has such authority as may be fairly implied from the statutory authorization. *Rainbo Baking Co. v. Commissioner of Revenue*, 84 N.M. 303, 502 P.2d 406 (Ct. App. 1972)(decided under prior law).

**Presumption of validity overcome by showing regulation void.** — A showing of a void time requirement established by a regulation of the commissioner (now secretary) overcame the presumption of validity stated in former 7-1-5 NMSA 1978. *Rainbo Baking Co. v. Commissioner of Revenue*, 84 N.M. 303, 502 P.2d 406 (Ct. App. 1972)(decided under prior law).

**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.

**Director (now secretary) reversed for arbitrariness.** — Since the commissioner (now secretary), before arriving at a decision, did not consider all of the evidence presented at the hearing but only that pertaining to the "indicia" under G.R. Regulation 12.5:1, the court could not say that he would have reached the same conclusion had all of "the evidence presented and admitted" been considered as required by 7-1-24 NMSA 1978 and therefore held the ruling reversed for arbitrariness. *Eaton v. Bureau of Revenue*, 84 N.M. 226, 501 P.2d 670 (Ct. App.), cert. denied, 84 N.M. 219, 501 P.2d 663 (1972) (decided under prior law).

**Director's (now secretary's) instructions to be in ordinary language.** — To aid in the accomplishment of his duties, instructions issued by the director (now secretary) to every resident individual upon whom an income tax is imposed should be in ordinary, everyday language understood by the man or woman on the street. *Davis v. New Mexico State Bureau of Revenue*, 95 N.M. 218, 620 P.2d 376 (Ct. App. 1980)(decided under prior law).

**Judicial review of rulings.** — The legislature has provided a comprehensive scheme for protesting department of revenue and county actions. In not providing more specifically for judicial review of a ruling, the legislative intent was that the ruling should be applied before it is reviewed, in the absence of some applicable exception. *Grand Lodge of Ancient & Accepted Masons v. Taxation & Revenue Dep't*, 106 N.M. 179, 740 P.2d 1163 (Ct. App. 1987)(decided under prior law).

**Director (now secretary) is a state officer.** *State ex rel. Bureau of Revenue v. MacPherson*, 79 N.M. 272, 442 P.2d 584 (1968), overruled on other grounds *New Mexico Livestock Bd. v. Dose*, 94 N.M. 68, 607 P.2d 606 (1980) (decided under prior law).

### **9-11-6.3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 176, § 2 repeals 9-11-6.3 NMSA 1978, as enacted by Laws 1995, ch. 31, § 4, relating to payment methods of any amount due the state under any law or program administered by the department, effective June 18, 1999. For provisions of former section, see 1998 Cumulative Supplement. For present comparable provisions, see 6-10-1.2 NMSA 1978.

### **9-11-6.4. Electronic filing.**

The department is authorized to require where practical, in lieu of the filing of paper documents, the filing by electronic or optical means of any return, application, report or other document required under any law or program administered by the department. The department, using reasonable criteria, may require some classes of persons to file electronically or optically while not so requiring others to file in that manner. The date of filing shall be the date the return, application, report or other document is transmitted to the department in a form able to be processed.

**History:** Laws 1995, ch. 31, § 5.

#### **ANNOTATIONS**

**Cross references.** — For electronic authentication and substitution for signature, see 14-3-15.2 NMSA 1978.

#### **9-11-7. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1986, ch. 20, § 136A repeals 9-11-7 NMSA 1978, as enacted by Laws 1977, ch. 249, § 8, relating to exemption of certain subordinates' final decision-making authority from the authority of the secretary, effective July 1, 1986. For provisions of former section, see 1983 Replacement Pamphlet.

#### **9-11-8. Division directors.**

Each division in the department, whether established by law or order of the secretary, shall be headed by a "director." Directors shall be appointed by the secretary with the approval of the governor.

**History:** 1978 Comp., § 9-11-8, enacted by Laws 1977, ch. 249, § 9.

#### **ANNOTATIONS**

**Cross references.** — For exemption of directors from Personnel Act, see 9-11-6B(10), 9-11-10 NMSA 1978.

For appointment of directors, see 9-11-6B(10) NMSA 1978.

#### **9-11-9. Bureaus as organizational units.**

The divisions of the department may have established within them organizational units to be known as "bureaus." Bureaus shall be headed by a "chief" appointed by the secretary.

**History:** 1978 Comp., § 9-11-9, enacted by Laws 1977, ch. 249, § 10.



## **9-11-10. Personnel Act coverage.**

All employment positions in the department, except for the positions of secretary and division director, are covered by and subject to the provisions of the Personnel Act [10-9-1 NMSA 1978]. The secretary is the appointing authority.

**History:** 1978 Comp., § 9-11-10, enacted by Laws 1977, ch. 249, § 11.

## **9-11-11. Legal advisor.**

The attorney general is the legal advisor to the secretary, but the secretary may employ other counsel and, in so doing, shall consult the attorney general.

**History:** 1978 Comp., § 9-11-11, enacted by Laws 1977, ch. 249, § 13.

## **9-11-12. Cooperative agreements among jurisdictions.**

A. The secretary may enter into cooperative agreements with other states, the district [District] of Columbia or with any appropriate authority empowered to administer multistate cooperative agreements for the exchange of information, the reciprocal, joint or common enforcement and administration of revenue or transportation laws of the party jurisdictions or the reciprocal, joint or common collection, remittance and audit of revenues of the party jurisdictions.

B. Funds collected by the department on behalf of another jurisdiction in accordance with an agreement entered into pursuant to this section are not funds of this state and shall be collected and disbursed in accordance with the terms of the agreement, notwithstanding any other provision of law.

C. The secretary is empowered to promulgate such rules and regulations and to establish such procedures as the secretary deems appropriate for the collection and disbursement of funds due other party jurisdictions and for the receipt of funds collected by other party jurisdictions for the account of this state under the terms of a cooperative agreement entered into under the authority of this section.

**History:** 1978 Comp., § 9-11-12, enacted by Laws 1988, ch. 24, § 1.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed word in Subsection A was inserted by the compiler. It was not enacted by the legislature, 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 with 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 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 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 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 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 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.

## ANNOTATIONS

**Cross references.** — For credit on gross receipts tax paid to Santa Clara Pueblo, see 7-9-88 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, added "Santa Ana pueblo and Laguna pueblo" to the section heading, in Subsection A, substituted "Santa Clara pueblo, Santa Ana pueblo and Laguna pueblo for the exchange of information" for "Santa Clara pueblo and for the exchange of information"; in Subsections B, C, and D, substituted "the pueblo" for "Santa Clara pueblo"; in Subsection E, inserted "with Santa Clara pueblo" near the beginning.

**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 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 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.

## **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.

### **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**

**Federal Oil and Gas Royalty Management Act of 1982.** — The Federal Oil and Gas Royalty Management Act of 1982, referred to in the second sentence, appears as 30 U.S.C. § 1701 et seq.

## **ARTICLE 12**

### **Transportation Department**

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

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

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 49, § 1 and Laws 1987, ch. 268, § 43 repeal 9-12-1 to 9-12-8 NMSA 1978, as enacted by Laws 1977, ch. 250, §§ 1 to 3, 5 to 8, and 10 concerning the transportation department, secretary of transportation, and school bus safety inspections. For provisions of former sections see 1983 Replacement Pamphlet. For present comparable provisions, see 9-11-4, 67-3-6 NMSA 1978.

## **ARTICLE 13**

### **Employment Security Department**

(Repealed by Laws 1987, ch. 342, § 34.)

#### **9-13-1 to 9-13-7. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 342, § 34 repeals 9-13-1 to 9-13-7 NMSA 1978, as enacted by Laws 1979, ch. 280, §§ 3 to 9, relating to the employment security department, effective July 1, 1987. For provisions of former sections, see 1983 Replacement Pamphlet.

## **ARTICLE 14**

### **Executive Planning**

#### **9-14-1. Short title.**

Sections 1 through 7 of this act [9-6-5.1, 9-14-1 to 9-14-3 NMSA 1978] may be cited as the "Executive Planning Act".

**History:** Laws 1983, ch. 296, § 1.

#### **ANNOTATIONS**

**Compiler's notes.** — Sections 5 and 6 of the Executive Planning Act (Laws 1983, ch. 296, §§ 5 and 6) contained a repealing clause, which repealed 15-6-1 to 15-6-3 NMSA 1978, and a saving clause related to that repeal.

#### **9-14-2. Purpose.**

The purpose of the Executive Planning Act [9-6-5.1, 9-14-1 to 9-14-3 NMSA 1978] is to achieve a coordinated and effective planning mechanism by which the executive branch will foster implementation of a comprehensive planning effort for the state of New Mexico through consolidation of the strategic planning effort for the state within the office of the chief executive, and through consolidation of the administrative aspects of state planning efforts within concerned executive agencies.

**History:** Laws 1983, ch. 296, § 2.

### **9-14-3. Governor's office of policy and planning created; powers and duties.**

There is created in the office of the governor and executive planning group, to be called the governor's office of policy and planning. Staff members of the governor's office of policy and planning shall be appointed by the governor, and shall be called governor's policy assistants. The governor's office of policy and planning shall provide overall plans for New Mexico state government in key areas such as, but not necessarily limited to, economic development, education, human and natural resources and energy. These plans will define and set forth ways to implement policies in order to achieve a cohesive direction in key areas. To design the overall plans the governor's office of policy and planning shall:

A. focus primarily on issue identification, formulation, analysis and follow through in order to develop major policy statements and implementation strategies, thereby achieving a cohesive and effective direction for the state;

B. define strategic issues where coordination of federal and state government resources is necessary in order to effectively determine and implement a coordinated and cohesive direction for state policy, and in order to ensure responsive and efficient state government.

To implement the overall plans and policies, the governor's office of policy and planning shall:

A. prepare a governor's policy manual to define the focus of the overall state plans and policies;

B. coordinate executive implementation of the plans and policies;

C. prepare legislative proposals which would implement plans and policies;

D. promote efficient inter-department coordination in the implementation and administration of the plans and policies;

E. coordinate cabinet meeting to achieve a cohesive direction in the implementation of the plans and policies;

F. serve as staff to the governor's alternate to the southwest border regional association;

G. serve as staff to the governor's alternate to the council of four corners governors;

H. consider emergency preparedness needs in conjunction with the office of military affairs and provide, as necessary, staff to coordinate these needs;

I. conduct ongoing planning studies to identify and analyze emerging planning and policy issues requiring immediate attention, and conduct special planning and policy studies as requested by the governor.

**History:** Laws 1983, ch. 296, § 3.

#### **9-14-4. Community development block grants.**

A. The community development block grant programs shall be administered by the local government division of the department of finance and administration.

B. The New Mexico community development council shall determine the recipients and amounts of community development block grant awards.

**History:** Laws 1984, ch. 5, § 1.

#### **ANNOTATIONS**

**Cross references.** — For the local government division of the department of finance and administration, see 6-6-2 NMSA 1978.

For New Mexico community development council, see 11-6-4 NMSA 1978.

**Repeals and reenactments.** — Laws 1984, ch. 5, § 1, repeals former 9-14-4 NMSA 1978, as enacted by Laws 1983, ch. 296, § 4, and enacts the above section. For provisions of former section, see 1983 Replacement Pamphlet.

## **ARTICLE 15**

### **Economic Development Department**

#### **9-15-1. Short title.**

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

**History:** Laws 1983, ch. 297, § 1; 1988, ch. 81, § 1; 1991, ch. 21, § 9.

#### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, deleted " 'and Tourism' " following " 'Development' ".

## **9-15-2. Findings and purpose.**

A. The legislature finds that a need exists for economic diversification in the state in order to protect against dramatic changes in the state's economy and to increase revenues to help state government finance the various services it provides to the state's communities and citizens.

B. The legislature further finds that the goal of economic development and diversification can best be accomplished by creating a cabinet-level department which will be concerned solely with the areas of economic development and diversification, business recruitment, expansion and retention.

C. The purpose of the Economic Development Department Act [9-15-1 to 9-15-15 NMSA 1978] is to create a cabinet-level department in order to:

- (1) provide a coordinated statewide perspective with regard to economic development activities;
- (2) provide a data base for local and regional economic development groups and serve as a comprehensive source of information and assistance to businesses wishing to locate or expand in New Mexico;
- (3) actively encourage new economic enterprises to locate in New Mexico and assist existing businesses to expand;
- (4) monitor the progress of state-supported economic development activities and prepare annual reports of such activities, their status and their impact;
- (5) create and encourage methods designed to provide rapid economic diversification development that will create new employment opportunities for the citizens of the state, including the issuance of grants and loans to municipalities and counties for economic enhancement projects;
- (6) provide for technology commercialization projects as an incentive to industry locating or expanding in the state;
- (7) support technology transfer programs;
- (8) promote New Mexico as a technology conference center;
- (9) promote and market federal and state technology commercialization programs;
- (10) develop and implement enhanced statewide procurement programs; and



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

**History:** Laws 1983, ch. 297, § 2; 1991, ch. 21, § 10.

### ANNOTATIONS

**The 1991 amendment**, effective March 27, 1991, in Subsection B, inserted "business recruitment, expansion" and substituted "retention" for "tourism promotion"; and, in Subsection C, deleted "and tourism" following "development" in four places, inserted "and loans" in Paragraph (5), substituted "technology commercialization" for "research and development" in Paragraph (6), rewrote Paragraph (7), which read "perform those functions previously exercised by the economic development division and board, the New Mexico magazine division and the tourism and travel division of the commerce and industry department", inserted present Paragraphs (8) to (10), redesignated former Paragraph (8) as present Paragraph (11) and substituted "and agricultural finance authorities" for "finance authority" in Paragraph (11).

### 9-15-3. Definitions.

As used in the Economic Development Department Act [9-15-1 to 9-15-15 NMSA 1978]:

- A. "commission" means the economic development commission;
- B. "department" means the economic development department; and
- C. "secretary" means the secretary of economic development.

**History:** Laws 1983, ch. 297, § 3; 1988, ch. 81, § 2; 1991, ch. 21, § 11; 1993, ch. 101, § 1.

### ANNOTATIONS

**The 1991 amendment**, effective March 27, 1991, deleted "and Tourism" following "Development" in the introductory language and "and tourism" following "development" in Subsections A and B; deleted former Subsections C, E and F, which defined "research and development", "technical excellence" and "technological innovation", respectively; redesignated former Subsection D as present Subsection C; and, in Subsection C, substituted "the economic development department" for "economic development and tourism".

**The 1993 amendment**, effective June 18, 1993, deleted "and tourism" following "development" in Subsection A and, in Subsection C, deleted "department" following "development" and made a minor stylistic change.

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

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

- A. the administrative services division;
- B. the economic development division;
- C. the New Mexico film division;
- D. the technology enterprise division;
- E. the trade and Mexican affairs division; and
- F. the space commercialization 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.

#### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, deleted " 'and tourism' " following " 'development' " in the first sentence; substituted "seven" for "six" in the second sentence; deleted former Subsections D and E, listing the New Mexico film and New Mexico magazine divisions; added present Subsections D and F; redesignated former Subsection F as present Subsection E; and made a related stylistic change.

**The 1994 amendment**, effective March 8, 1994, added Subsection G and made related changes.

**The 1995 amendment**, effective April 5, 1995, in Subsection G, substituted "office for space commercialization" for "office of space".

**The 1998 amendment**, effective July 1, 1998, substituted "six" for "seven" in the introductory language; added "and" at the end of Subsection E; deleted former Subsection F relating to the state housing authority, and redesignated Subsection G as Subsection F.

**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.

#### **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 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 [9-15-1 to 9-15-15 NMSA 1978], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

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

(3) organize the department into those organizational units he deems will enable it to function most efficiently;

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

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

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

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

(8) prepare an annual budget of the department based upon the five-year economic development plan approved by the commission. The economic development plan shall be updated and approved annually by the commission;

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

(a) minimize or eliminate duplication of services;

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

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

(10) appoint a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act [10-9-1 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 Border Development Act, see 58-27-1 NMSA 1978 et seq.

**The 1991 amendment,** effective March 27, 1991, in Subsection B, deleted "and Tourism" following "Department" in Paragraph (1), deleted "or actions" following "action" in Paragraph (5) and, in Paragraph (8), inserted "and tourism" in the first sentence and added the second sentence.

**The 1993 amendment,** effective June 18, 1993, deleted "and tourism" following both occurrences of "economic development" in Subsection B(8).

**Classified personnel retain status upon transfer to successor department.** — If classified personnel of the former commerce and industry department are transferred to the new economic development and tourism department, the personnel retain the same classified status and position that they held in the former department and are within the coverage of the Personnel Act if a classified position is to become exempt from the provisions of the Personnel Act, then it must first become vacant. 1983 Op. Att'y Gen. No. 83-3 (rendered prior to 1991 amendment).

### **9-15-7. Secretary; additional duties.**

In addition to the secretary's responsibility for the overall supervision of the department's operation in support of the purposes of the Economic Development Department Act [9-15-1 to 9-15-15 NMSA 1978], the secretary shall:

- A. work with and provide staff support to the commission in formulating and implementing the state's five-year economic development plan;
- B. advise the commission of proposed rules, regulations, projects and contractual arrangements;
- C. enter into contracts with state, federal or private entities, apply for and accept any state, federal or private funds or grants for such projects and accept similar donations and bequests from any source;
- D. maintain and update records on the status of all completed and ongoing projects of the department;
- E. develop, maintain and provide economic and demographic information; and
- F. perform such other duties as requested by the commission in order to further the purposes of the Economic Development Department Act.

**History:** Laws 1983, ch. 297, § 7; 1988, ch. 81, § 4; 1991, ch. 21, § 15; 1993, ch. 101, § 3.

### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, deleted "and Tourism" following "Development" in the introductory paragraph and in Subsection F and, in Subsection A, substituted "the state's five-year" for "short-and long-term statewide" and "plan" for "programs".

**The 1993 amendment**, effective June 18, 1993, deleted "and tourism" following "development" in Subsection A.

### **9-15-7.1. Additional planning duties of secretary.**

The secretary, in addition to other duties, shall serve as lead agency in coordination of the census program at the state data center.

**History:** Laws 1983, ch. 296, § 21; 1991, ch. 21, § 16; 1998, ch. 63, § 2.

#### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, substituted "the economic development" for "commerce and industry" in the catchline and for "the commerce and industry" in the introductory paragraph.

**The 1998 amendment**, effective July 1, 1998, deleted "of the economic development department" from the section heading and rewrote this section to the extent that a detailed comparison is impracticable.

#### **9-15-8, 9-15-9. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1988, ch. 81, § 13 repeals 9-15-8 and 9-15-9 NMSA 1978, as enacted by Laws 1983, ch. 297, §§ 8, 9, relating to establishment of bureaus within each division, and exemption from the Personnel Act, effective May 18, 1988. For provisions of former sections, see 1987 Replacement Pamphlet.

#### **9-15-10. Organizational units of department; powers and duties specified by law; access to information.**

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, and he shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 9-15-6 NMSA 1978. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law. Any information obtained by the department that is proprietary technical information or related to the possible relocation or expansion of a business shall be deemed confidential and withheld from inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

**History:** Laws 1983, ch. 297, § 10; 1991, ch. 21, § 17; 1997, ch. 169, § 1.

#### **ANNOTATIONS**



**The 1991 amendment**, effective March 27, 1991, substituted "9-15-6 NMSA 1978" for "6 of the Economic Development and Tourism Department Act" at the end of the second sentence.

**The 1997 amendment**, effective June 20, 1997, added the last sentence.

### **9-15-11. Economic development commission created; membership; administratively attached to the department.**

A. The "economic development commission" is created. The commission shall be a planning commission administratively attached to the department. The commission shall provide advice to the department on policy matters. The commission shall be responsible for the annual approval and update of the state's five-year economic development plan. The commission shall consist of nine members who shall be qualified electors of the state, no more than five of whom at the time of their appointment shall be members of the same political party and at least one of whom shall be a Native American. Members shall be appointed by the governor and confirmed by the senate. Seven members shall be appointed from their respective planning districts, the eighth member shall be a Native American and represent the interests of the Indian tribes and pueblos and the ninth member shall represent the public at large.

B. Appointments shall be made for five-year terms expiring on January 1 of the appropriate year. Commission members shall serve staggered terms as determined by the governor at the time of their initial appointment. Annually, the governor shall designate a chairman of the commission from among the members.

C. The commission shall meet at the call of the chairman, not less than once each quarter, and shall invite representatives of appropriate legislative committees, other state agencies and interested persons to its meetings for the purpose of information exchange and coordination.

D. Commission members shall not vote by proxy. A majority of the members constitutes a quorum for the conduct of business.

E. Members of the commission shall not be removed except for incompetence, neglect of duty or malfeasance in office; provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given the member being removed. The senate shall be given exclusive original jurisdiction over proceedings to remove members of the commission under such rules as it may promulgate. The senate's decision in connection with such matters shall be final. A vacancy in the membership of the commission occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

F. Commission members shall not be paid, but shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** 1978 Comp., § 9-15-11, enacted by Laws 1988, ch. 81, § 5; 1991, ch. 21, § 18; 1993, ch. 101, § 4; 1997, ch. 172, § 1.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1988, ch. 81, § 5 repealed former 9-15-11 NMSA 1978, as amended by Laws 1987, ch. 112, § 1, and enacted a new 9-15-11 NMSA 1978, effective May 18, 1988. For provisions of former section, see 1987 Replacement Pamphlet.

**The 1991 amendment,** effective March 27, 1991, in Subsection A, inserted "economic development department and the tourism" in the second sentence, substituted "state's" for "department's" in the fourth sentence, "nine members" for "seven members" and "five of whom" for "four of whom" in the fifth sentence and "Two members" for "A seventh member" at the beginning of the eighth sentence and added the last two sentences; and, in Subsection E, substituted "commission" for "board" in the third sentence and for "committee" in the last sentence.

**The 1993 amendment,** effective June 18, 1993, in Subsection A, deleted "and tourism" following "economic development" in the first and fourth sentences, deleted "and the tourism department" following "department" in the second sentence, substituted "seven" for "nine" and "four" for "five" in the fifth sentence, deleted the former seventh sentence, which read "Two members shall be appointed from the state at large", substituted "seventh" for "ninth" in the eighth sentence, and added the last sentence; and, in Subsection E, in the third sentence, deleted "state" preceding "senate" and deleted "of New Mexico" following "senate."

**The 1997 amendment,** in Subsection A, substituted "nine members" for "seven members" and "five of whom" for "four of whom" in the fourth sentence, deleted three sentences relating to the appointment of two members from each of the three congressional districts and the appointment and duties of the governor's science advisor, added the last sentence, and made stylistic changes; and substituted "five-year terms" for "seven-year terms" in the first sentence of Subsection B. Laws 1997, ch. 172 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **9-15-12. Commission; powers and duties.**

The commission shall:

A. develop and recommend policies and provide policy and program guidance for the department;

B. review, modify and approve annual updates to the state's five-year economic development plan generated by the department;

C. advise, assist and promote the department on matters relating to technology, technology-based new business development and technology commercialization projects;

D. review federal technology-based programs requiring state matching funds and authorize any expenditure or pledge of the state match fund for such programs; and

E. establish such rules and regulations for its own operations as are necessary to achieve the purposes of the Economic Development Department Act [9-15-1 to 9-15-15 NMSA 1978]. Rules and regulations of the commission shall be adopted in the same procedural manner as rules and regulations of the department are adopted and shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** Laws 1983, ch. 297, § 12; 1988, ch. 81, § 6; 1991, ch. 21, § 19; 1993, ch. 101, § 5; 1994, ch. 113, § 1.

## ANNOTATIONS

**Cross references.** — For state match fund, see 9-15-19.1 NMSA 1978.

**The 1991 amendment**, effective March 27, 1991, inserted "economic development department and the tourism" in Subsection A; deleted former Subsection B, which read "assist and promote research and development projects in the state"; redesignated former Subsection C as present Subsection B and inserted "state's" therein; inserted present Subsection C; and, in Subsection D, deleted "and Tourism" following "Development" and added "and the Tourism Department Act" in the first sentence and substituted "departments" for "department" in the second sentence.

**The 1993 amendment**, effective June 18, 1993, deleted "and the tourism department" following "department" at the end of Subsection A, deleted "and tourism" following "development" in Subsection B, and, in Subsection D, deleted "and the Tourism Department Act" following "Act" at the end of the first sentence and made a minor stylistic change in the second sentence.

**The 1994 amendment**, effective May 18, 1994, deleted "economic development" preceding "department" in Subsection A; added "and" at the end of Subsection C; added present Subsection D; and redesignated former Subsection D as present Subsection E.

## 9-15-12.1 to 9-15-13. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 1991, ch. 21, § 46 repeals 9-15-12.1, 9-15-12.2, 9-15-13 NMSA 1978, as enacted by Laws 1988, ch. 81, §§ 7 and 8 and as amended by Laws 1988, ch. 81, § 9, relating to creation of the business development board, tourism board, and

science and technology commercialization commission, respectively, effective March 27, 1991. For provisions of former sections, see 1989 Replacement Pamphlet.

Laws 1991, ch. 230, § 1 also repeals 9-15-12.1 and 9-15-12.2 NMSA 1978, effective June 14, 1991.

### **9-15-14. Administrative services division; duties.**

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

- (1) keeping all official records of the department;
- (2) providing personnel administration, financial management, procurement and budget preparation services; and
- (3) providing clerical, record-keeping and administrative support to agencies administratively attached to the department.

B. The division shall, in addition to its other duties, administer programs and grants that have been assigned generally to the department by the governor or the commission or by statute.

**History:** Laws 1983, ch. 297, § 14; 1988, ch. 81, § 10; 1991, ch. 21, § 20; 1995, ch. 163, § 1.

### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, added Subsection C.

**The 1995 amendment**, effective July 1, 1995, deleted Subsection C and made a minor stylistic change in Subsection B.

### **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 Chapter 5, Article 10 NMSA 1978.

**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.

### **9-15-16. Technology enterprise division created.**

The "technology enterprise division" is created as a division of the economic development department. The division shall:

A. enhance the business climate to encourage the start-up, relocation, development and growth of technology-based industry in New Mexico;

B. promote an expanded, diversified technology-based economy, emphasizing areas that:

- (1) derive from the state's technological strengths;
- (2) provide a commercial advantage;
- (3) lend themselves to a distributed technology-based industry network; and
- (4) utilize imaginative state, federal and private partnerships; and

C. attain sufficient levels of human, financial and physical resources to support in-state industries and attract new industries to New Mexico.

**History:** 1978 Comp., § 9-15-16, enacted by Laws 1991, ch. 21, § 21.

## **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1991, ch. 21, § 21 repeals former 9-15-16 NMSA 1978, as amended by Laws 1988, ch. 88, § 11, relating to short title of the Research and Development Act, and enacts the above section, effective March 27, 1991. For provisions of former section, see 1989 Replacement Pamphlet.

### **9-15-17. Director; duties.**

The director of the technology enterprise division is responsible for the overall supervision of the division in accordance with the provisions of Section 9-15-16 NMSA 1978. In addition, the director shall:

- A. formulate and submit to the commission a five-year state technology development plan;
- B. develop and be responsible for the operating and capital budgets of the division;
- C. develop agreements with federal research, development, testing and evaluating organizations and universities to facilitate the transfer and commercialization of technology;
- D. recommend to the secretary proposed projects and contracts in accordance with the policies, procedures and guidelines established by the department;
- E. subject to the approval of the secretary, apply for and accept any federal funds or grants and private donations;
- F. develop requests for proposals in technology commercialization areas given priority by the commission in the state's economic development and tourism plan; receive and refer with commentary to the secretary proposals submitted in response to requests for proposals; confer with research investigators to assist them when needed; monitor progress on state-funded research and development projects; maintain contact with research and development offices of the universities, federal laboratories and private research operations; and receive reports of individual projects;
- G. prepare an annual report on:
  - (1) the status of the technology enterprise division;
  - (2) the status of ongoing research and development projects;
  - (3) the results obtained from completed projects and the dissemination of those results; and

(4) other activities of the division;

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

I. request from each entity under contract with the division a detailed description of tasks and associated budgets for review and approval by the commission; and

J. perform such other duties as are assigned to him by the secretary in order to further the purposes of Section 9-15-17 NMSA 1978.

**History:** 1978 Comp., § 9-15-17, enacted by Laws 1991, ch. 21, § 22.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1991, ch. 21, § 22 repeals former 9-15-17 NMSA 1978, as amended by Laws 1987, ch. 161, § 2, relating to findings and purpose of the Research and Development Act, and enacts the above section, effective March 27, 1991. For provisions of former section, see 1989 Replacement Pamphlet.

### 9-15-18. Proprietary information.

A. Any information obtained by the technology enterprise division that is deemed by the director to be proprietary technical or business information shall be held in confidence. Proprietary technical or business information shall not be deemed a public record under the Public Records Act [Chapter 14, Article 3 NMSA 1978] or be open to inspection under Section 14-2-1 NMSA 1978. The technology enterprise division shall take such steps as are necessary to safeguard the confidentiality of the information.

B. Notwithstanding Sections 10-15-1 through 10-15-4 NMSA 1978 or any other law requiring meetings of public bodies to be open to the public, meetings of the commission shall be closed when proprietary technical or business information is discussed.

**History:** 1978 Comp., § 9-15-18, enacted by Laws 1991, ch. 21, § 23.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1991, ch. 21, § 23 repeals former 9-15-18 NMSA 1978, as amended by Laws 1988, ch. 81, § 12, relating to definitions in the Research and Development Act, and enacts the above section, effective March 27, 1991. For provisions of former section, see 1989 Replacement Pamphlet.

### 9-15-19. Technology enterprise fund created.

There is created in the state treasury the "technology enterprise fund". No money appropriated to this fund or accruing to it through cooperative research and technology

transfer agreements, gifts, grants or bequests shall be transferred to another fund or encumbered or disbursed in any manner except for activities conducted pursuant to Sections 9-15-16 through 9-15-19 NMSA 1978. The fund shall not revert at the end of a fiscal year. Money appropriated to the research and development fund is appropriated to the technology enterprise fund provided any existing agreement to be paid from funds appropriated to the research and development fund shall be paid from the technology enterprise fund. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary or his designee for the purpose of paying the cost of activities conducted pursuant to Sections 9-15-16 through 9-15-19 NMSA 1978.

**History:** 1978 Comp., § 9-15-19, enacted by Laws 1991, ch. 21, § 24.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1991, ch. 21, § 24 repeals former 9-15-19 NMSA 1978, as enacted by Laws 1986, ch. 38, § 4, relating to creation of New Mexico research and development institute, and enacts the above section, effective March 27, 1991. For provisions of former section, see 1989 Replacement Pamphlet.

#### **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.

#### **9-15-20. Repealed.**

### ANNOTATIONS

**Repeals.** — Laws 1993, ch. 101, § 12 repeals 9-15-20 NMSA 1978, as amended by Laws 1987, ch. 161, § 3, relating to duties of the economic development and tourism



commission, effective June 18, 1993. For provisions of former section, see 1991 Replacement Pamphlet.

### **9-15-21 to 9-15-27. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 21, § 46 repeals 9-15-21 to 9-15-27 NMSA 1978, as enacted by Laws 1986, ch. 38, §§ 6, 9 and 10, Laws 1987, ch. 161, § 5, Laws 1988, ch. 80, § 1 and as amended by Laws 1987, ch. 161, § 4, and Laws 1989, ch. 324, § 3, relating to technical advisory committee, duties of director, research and development fund, proprietary information, exemption from the Personnel Act, contractual relationships with existing entities, and short title of the New Mexico Trade Promotion Act, respectively, effective March 27, 1991. For provisions of former sections, see 1989 Replacement Pamphlet.

### **9-15-28. Findings and purpose. [Repealed.]**

#### **ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 404, § 4 repeals 9-15-28 NMSA 1978, as amended by Laws 1991, ch. 21, § 25, relating to findings and purpose, effective June 20, 2003. For provisions of former section, see 1994 Replacement Pamphlet.

### **9-15-29. Definitions.**

As used in Sections 9-15-28 through 9-15-34 NMSA 1978:

- A. "department" means the economic development department;
- B. "director" means the director of the trade 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**

**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.

**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.

### **9-15-30. Trade and Mexican affairs division created; duties.**

A. The "trade and 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. The division is created to:

(1) coordinate activities of the department, the tourism department, the office of cultural affairs, the state highway and transportation department, the department of health, the department of environment, the department of public safety, the New Mexico border 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;

(2) promote New Mexico products and services to potential domestic and international consumers;

(3) establish a central registry for New Mexico products and services;

(4) develop, maintain and use a database of potential domestic and international consumers of New Mexico products and services; and

(5) foster, coordinate and support the efforts of individuals and organizations involved in the promotion of New Mexico products and services to consumers.

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.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed word "affairs" in Subsection A was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

**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.

### **9-15-31. Director; duties.**

The director is responsible for the overall supervision of the division's activities in accordance with the purposes of Sections 9-15-28 through 9-15-34 NMSA 1978. In addition, the director shall:

A. work with individuals and organizations outside of state government to formulate a trade promotion plan for inclusion in the department's five-year economic development and tourism plan;

B. establish and annually update the New Mexico trade registry of New Mexico businesses and the products and services they offer to consumers;

C. develop and maintain a data base of trade opportunities;

D. work with individuals and organizations outside of state government to promote New Mexico trade; and

E. prepare an annual report on the activities of the division.

**History:** Laws 1988, ch. 80, § 5; 1991, ch. 21, § 27.

#### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, substituted "Sections 9-15-28 through 9-15-34 NMSA 1978" for "the New Mexico Trade Promotion Act" in the first sentence and deleted "five-year" before "trade promotion plan" in Subsection A.

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

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

**History:** Laws 1989, ch. 205, § 1; 1991, ch. 21, § 28.

#### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, deleted "and tourism" following "development".

### **9-15-33. Purpose.**

The purpose of the office of enterprise development shall be to provide information and assistance to businesses wishing to relocate to New Mexico or to expand within New Mexico by providing a centralized information service and assistance center.

**History:** Laws 1989, ch. 205, § 2.

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

A. The economic development department shall establish the office of enterprise development. Within the office of enterprise development, the department shall:

(1) develop and maintain a comprehensive statewide business information data base and referral service;

(2) establish a mechanism for advertising the existence of the office and its referral service;

(3) provide professional assistance and information regarding licensing, permitting and taxation procedures; and

(4) establish a reporting procedure to monitor the success of the referral service.

B. The department shall develop a budget and hire a staff to operate the office of enterprise development.

**History:** Laws 1989, ch. 205, § 3; 1991, ch. 21, § 29.

### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, deleted "and tourism" following "development" in the first sentence in Subsection A.

### **9-15-35. Program created; purposes.**

A. The "New Mexico artisans business development program" is created within the economic development and tourism department to promote, in conjunction with the arts division of the office of cultural affairs, the New Mexico artisans industry by establishing a greater demand for New Mexico artisans' wares and by providing technical and marketing assistance to New Mexico artisans.

B. The purposes of the program shall include, but not be limited to, the following:

(1) establishment of a not-for-profit organization to carry out the objectives of the New Mexico artisans business development program;

(2) educational workshops and seminars in cooperation with the small business development centers for artisans to assist the centers in the development of their businesses and marketing of their wares;

(3) an assessment of a full range of marketing strategies for artisan wares and relating those wares to target markets;

(4) production of a promotional brochure of New Mexico artisans and their products;

(5) development and publishing of a marketing catalog of New Mexico artisans;

(6) establishment of a network of state and national distribution points and gift and trade shows for the promotion and export of New Mexico artisans' wares;

(7) development of a state and national marketing and exhibitions calendar;

(8) participation in state and national promotional shows by New Mexico artisans; and

(9) development of a marketing network with private-sector distributors, catalog producers and retailers.

**History:** Laws 1991, ch. 27, § 1.

### **9-15-36. Fund created.**

There is created in the state treasury the "New Mexico artisans business development fund". The fund shall consist of money appropriated to the fund by the legislature and any other revenues directed to the fund, such as gifts, donations and grants. The fund shall be administered by the economic development and tourism department and expenditures may be made from the fund upon vouchers signed by the secretary of economic development and tourism and warrants issued by the secretary of finance and administration for the purposes of the New Mexico artisans business development program. Interest earned on balances in the fund shall be credited to the fund.

**History:** Laws 1991, ch. 27, § 2.

### **9-15-37. Short title.**

Sections 1 through 5 [9-15-37 to 9-15-41 NMSA 1978] of this act may be cited as the "Defense Conversion and Technology Act".

**History:** Enacted by Laws 1993, ch. 211, § 1 and by Laws 1993, ch. 216, § 1.

## ANNOTATIONS

**Duplicate laws.** — Laws 1993, ch. 211, § 1 and Laws 1993, ch. 216, § 1 enact identical new sections of law. Both have been compiled as 9-15-37 NMSA 1978.

### **9-15-38. Purpose.**

The purpose of the Defense Conversion and Technology Act [9-15-37 to 9-15-41 NMSA 1978] is to designate the economic development department as the lead agency to promote defense conversion technology, coordinate the transfer of defense technology and other technology from federal, state and local government facilities to private sector industries and promote private-public partnership and business development programs.

**History:** Enacted by Laws 1993, ch. 211, § 2 and by Laws 1993, ch. 216, § 2.

## ANNOTATIONS

**Duplicate laws.** — Laws 1993, ch. 211, § 2 and Laws 1993, ch. 216, § 2 enact identical new sections of law. Both have been compiled as 9-15-38 NMSA 1978.

### **9-15-39. Definitions.**

As used in the Defense Conversion and Technology Act [9-15-37 to 9-15-41 NMSA 1978]:

A. "commission" means the economic development and tourism commission or any successor commission created in Chapter 9, Article 15 NMSA 1978 to provide program and policy guidance to the department; and

B. "department" means the economic development department.

**History:** Enacted by Laws 1993, ch. 211, § 3 and by Laws 1993, ch. 216, § 3.

## ANNOTATIONS

**Duplicate laws.** — Laws 1993, ch. 211, § 3 and Laws 1993, ch. 216, § 3 enact identical new sections of law. Both have been compiled as 9-15-39 NMSA 1978.

### **9-15-40. Designation as the lead state agency.**

The department is designated as the lead state agency to coordinate or accept federal and state funds appropriated for conversion of defense technologies and to coordinate technology transfer in accordance with the state's technology development plan.

**History:** Enacted by Laws 1993, ch. 211, § 4 and by Laws 1993, ch. 216, § 4.

### **ANNOTATIONS**

**Duplicate laws.** — Laws 1993, ch. 211, § 4 and Laws 1993, ch. 216, § 4 enact identical new sections of law. Both have been compiled as 9-15-40 NMSA 1978.

### **9-15-41. Defense conversion; department duties.**

A. The department shall coordinate all defense conversion and technology transfer activities of the state. The department is authorized to contract with the appropriate partnership intermediaries to assist in the coordination of defense conversion duties.

B. The department shall:

(1) oversee the activities of the manufacturing productivity center and manufacturing extension programs;

(2) coordinate the activities of small business incubators to encourage the development and viability of technology spin-off companies in the private sector;

(3) coordinate appropriate divisions in the department to provide technology export assistance;

(4) coordinate small business development and assistance programs for new and existing businesses;

(5) work with appropriate entities to identify sources of funding for capital expenditure programs and initial venture programs;

(6) coordinate the development of regional technology clusters; and

(7) provide support and coordination assistance as deemed necessary by the commission and the secretary of the department to assist the state in developing defense conversion industries.

**History:** Enacted by Laws 1993, ch. 211, § 5 and by Laws 1993, ch. 216, § 5.

### **ANNOTATIONS**

**Duplicate laws.** — Laws 1993, ch. 211, § 5 and Laws 1993, ch. 216, § 5 enact identical new sections of law. Both have been compiled as 9-15-41 NMSA 1978.

### **9-15-42. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 91, § 5 repeals 9-15-42 NMSA 1978, as enacted by Laws 1994, ch. 127, § 1, providing the short title. For provisions of former section, see 1994 Replacement Pamphlet. Laws 1997, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **9-15-43. Definitions.**

As used in Sections 9-15-43 through 9-15-47 NMSA 1978:

- A. "commission" means the space commission;
- B. "director" means the director of the space commercialization division;
- C. "division" means the space commercialization division;
- D. "secretary" means the secretary of economic development;
- E. "space" means any location beyond altitudes of sixty thousand feet above the earth's mean sea level; and
- F. "spaceport" means an installation and related facilities used for the launching, landing, recovery, servicing and monitoring of vehicles capable of entering or returning from space.

**History:** Laws 1994, ch. 127, § 2; 1995, ch. 77, § 2; 1997, ch. 91, § 1.

### **ANNOTATIONS**

**The 1995 amendment**, effective April 5, 1995, in Subsection C, substituted "office for space commercialization" for "office of space", and in Subsection E, substituted "launching" for "takeoff" and "recovery" for "retrieval", and inserted "or returning from".

**The 1997 amendment** rewrote this section to such an extent that a detailed comparison would be impracticable. Laws 1997, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment dates of Sessions of Legislature" table.

### **9-15-44. Space commercialization division created; duties of director.**

- A. The "space commercialization division" is created as a division in the economic development department.



B. The duties of the division shall be discharged by a director, who shall be hired by the secretary.

C. The director shall:

(1) employ such other staff as is necessary to carry out the work of the division and the commission and the purposes of Sections 9-15-43 through 9-15-47 NMSA 1978;

(2) discharge the responsibilities of the division in accordance with the policies established and approved by the secretary;

(3) administer federally funded grants for the purpose of determining the feasibility of developing and operating a regional spaceport and other space development-related activities in the state;

(4) manage all aspects of the spaceport program;

(5) coordinate the promotion and marketing of space-related resources of New Mexico and a regional spaceport;

(6) serve as the interface between New Mexico and national and international users of the regional spaceport;

(7) schedule user mission support with other elements of the regional spaceport;

(8) develop a comprehensive inventory of New Mexico's space-related assets;

(9) cooperate with the commission in performing tasks necessary to establish the criteria for overflight; and

(10) support the commission in executing the tasks approved by the secretary.

**History:** Laws 1994, ch. 127, § 3; 1995, ch. 77, § 3; 1997, ch. 91, § 2.

### **ANNOTATIONS**

**The 1995 amendment**, effective April 5, 1995, in the section heading added "duties of director", in the section heading and throughout the section, substituted "office for space commercialization" for "office of space", in Subsection B, deleted "in consultation with the commission" from the end, and rewrote Subsection C.

**The 1997 amendment** substituted "space commercialization division" for "office for space commercialization" in the section heading and in Subsection A; in Subsection A,

inserted "economic development"; substituted "division" for "office for space commercialization" in Subsection B and in Paragraphs C(1) and C(2); and, in Subsection C, substituted "Sections 9-15-43 through 9-15-47 NMSA 1978" for "the Spaceport Development Act" in Paragraph (1) and added "and other space development activities in the state" at the end of Paragraph (3). Laws 1997, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **9-15-45. Commission created; membership.**

A. The "space commission" is created. The commission is administratively attached to the department.

B. The commission is composed of up to eleven voting members. Three members shall be ex officio and all others shall be appointed by the governor. The ex-officio members are the secretary, the governor's science adviser and the lieutenant governor. In selecting the appointed members of the commission, the governor shall appoint at least three members knowledgeable of government and commercial space activities. One member shall be a resident of Sierra county, one member shall be a representative of a federal space development project in the state and one member shall be a representative of one of the state's national laboratories.

C. Appointed members of the commission shall serve for terms of three years; provided, when making his initial appointments, the governor shall appoint one member to a term of one year, two members to terms of two years and two members to terms of three years.

D. The governor shall appoint a chairman of the commission from among the appointed members. Other necessary officers shall be elected by the commission from among its membership.

E. Commission members shall meet at the call of the chairman, not less than four times a year. Meetings shall be conducted in different geographic locations in the state on an alternating basis.

F. Members of the commission appointed by the governor shall be reimbursed for per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall not receive any other compensation, perquisite or allowance.

**History:** Laws 1994, ch. 127, § 4; 1995, ch. 77, § 4; 1997, ch. 91, § 3.

### **ANNOTATIONS**

**Cross references.** — For aerospace gross receipts tax deduction, see 7-9-54.1 NMSA 1978.

**The 1995 amendment**, effective April 5, 1995, in Subsection B, substituted "eleven" for "thirteen" in the first sentence, substituted "four" for "six" in the second sentence, deleted "of economic development" following the first "secretary" in the third sentence, substituted "three" for "two", deleted "representative or" following "members", and inserted "commercial" preceding "space" in the fourth sentence, and substituted the last sentence for "The governor of the states of Texas, Colorado, Arizona, and Chihuahua, Mexico can respectively appoint one member each when it is agreed that those states will contribute to operation of the spaceport".

**The 1997 amendment**, in Subsection A, substituted "space commission" for "spaceport commission"; in Subsection B, substituted "all others" for "four" in the second sentence, "governor's science adviser" for "secretary of finance and administration" in the third sentence, and "knowledgeable of government and commercial space activities" for "knowledgeable of the commercial space industry" in the next-to-last sentence, and, in the last sentence, added the language beginning with the second occurrence of "one member shall" to the end of the sentence; in Subsection C, substituted "two members" for "three members"; in Subsection E, added the second sentence; and, in Subsection F, deleted "of the state of New Mexico" following "by the governor". Laws 1997, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

## **9-15-46. Commission; powers; duties.**

The commission shall:

- A. in cooperation with the division, promote the development of a spaceport and other space development-related activities in the state;
- B. advise the secretary on methods for soliciting and accepting, on behalf of the state, federal, state, local and private funds for the purpose of developing, constructing, maintaining and operating a regional spaceport and other space development-related projects;
- C. act in an advisory capacity to the secretary on matters that pertain to the development and operation of space development-related projects;
- D. advise the secretary on methods for providing for the development, construction and acceptance of a regional spaceport; and
- E. report annually to the governor and the legislature on the status of the space development-related activities and projects undertaken by the commission.

**History:** Laws 1994, ch. 127, § 5; 1995, ch. 77, § 5; 1997, ch. 91, § 4.

## **ANNOTATIONS**

**The 1995 amendment**, effective April 5, 1995, rewrote Subsection A, deleted former Subsections B and C relating to a regional spaceport and advising the secretary on the hiring of a director of the office of space, rewrote and redesignated former Subsection D as Subsection B, deleted Subsection E, added Subsections C and D, and redesignated former Subsection F as Subsection E.

**The 1997 amendment** rewrote Subsection A; added "and other space development-related projects" at the end of Subsection B; substituted "space development-related projects" for "the regional spaceport" at the end of Subsection C; and substituted "space development-related" for "regional spaceport and other space-related" in Subsection E. Laws 1997, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **9-15-47. Additional powers of the commission.**

The commission may undertake additional specific activities related to monitoring the development, construction, operation and maintenance of the regional spaceport, including:

A. assisting the secretary in defining fees, rents, tolls and charges for the use of a regional spaceport facility or its related services;

B. as directed by the secretary, participating in the acquisition of real and personal property in the name of the state for the purpose of establishing a regional spaceport or space-related facility;

C. as directed by the secretary, initiating environmental, transportation, communication or technical studies necessary or advisable to the establishment of a regional spaceport; and

D. assisting the director in negotiating agreements for the overflight or recovery of space vehicles, rockets, missiles, payloads, boosters, scientific experiments or other space-related materials, debris or parts.

**History:** Laws 1994, ch. 127, § 6; 1995, ch. 77, § 6.

### **ANNOTATIONS**

**The 1995 amendment**, effective April 5, 1995, in the first paragraph, deleted "also" following "may", inserted "monitoring" and substituted "the regional spaceport" for "a regional spaceport"; in Subsection A, substituted "assisting the secretary in defining" for "imposing"; in Subsection B, substituted "as directed by the secretary, participating in the acquisition of" for "acquire"; in Subsection C, substituted "as directed by the secretary, initiating" for "perform or cause to be performed", and deleted "land use"

following "communication"; in Subsection D, substituted "assisting" for "assist"; and deleted former Subsection E relating to financing a regional spaceport.

**9-15-48. Office of military base planning and support created; duties. (Repealed effective July 1, 2006.)**

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's homeland security adviser 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 homeland security adviser, 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 homeland security adviser 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.

Laws 2003, ch. 166, § 1 and Laws 2003, ch. 170, § 1; 2004, ch. 16, § 1.

**ANNOTATIONS**

**Delayed repeals.** — For delayed repeal of this section, see 9-15-51 NMSA 1978.

**Effective dates.** — Laws 2003, ch. 170, § 5 makes the act effective on July 1, 2003.

**Duplicate laws.** — Laws 2003, ch. 170, § 1 and Laws 2003, ch. 166, § 1 enact identical new sections of law. Both have been compiled as 9-15-48 NMSA 1978.

**The 2004 amendment**, effective February 27, 2004, amended this section to move 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, 2006.)**

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 fifteen members, thirteen of which are appointed by the governor with the advice and consent of the senate. The commission shall include the lieutenant governor, the governor's homeland security adviser and appropriate representatives from the counties, or adjoining counties, in which military bases are located.

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 NMSA 1978].

D. Notwithstanding the provisions of the Open Meetings Act [10-15-1 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 [14-12-1 NMSA 1978].

History: Laws 2003, ch. 166, § 2 and Laws 2003, ch. 170, § 2; 2004, ch. 16, § 2.

**ANNOTATIONS**

**Delayed repeals.** — For delayed repeal of this section, see 9-15-51 NMSA 1978.

**Effective dates.** — Laws 2003, ch. 170, § 5 makes the act effective on July 1, 2003.

**Duplicate laws.** — Laws 2003, ch. 170, § 2 and Laws 2003, ch. 166, § 2 enact identical new sections of law. Both have been compiled as 9-15-49 NMSA 1978.

**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, 2006.).**

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 NMSA 1978.

**Effective dates.** — Laws 2003, ch. 170, § 5 makes the act effective on July 1, 2003.

**Duplicate laws.** — Laws 2003, ch. 170, § 3 and Laws 2003, ch. 166, § 3 enact identical new sections of law. Both have been compiled as 9-15-50 NMSA 1978.

## **9-15-51. Termination of agency life; delayed repeal.**

The office of military base planning and support and the military base planning commission are terminated on July 1, 2005 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 this act until July 1, 2006. Effective July 1, 2006, this act is repealed.

**History:** Laws 2003, ch. 166, § 4 and Laws 2003, ch. 170, § 4.

## ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 170, § 5 makes the act effective on July 1, 2003.

**Duplicate laws.** — Laws 2003, ch. 170, § 5 and Laws 2003, ch. 166, § 5 enact identical new sections of law. Both have been compiled as 9-15-51 NMSA 1978.

## ARTICLE 15A

### Tourism Department Act

#### 9-15A-1. Short title.

Chapter 9, Article 15A NMSA 1978 may be cited as the "Tourism Department Act".

**History:** Laws 1991, ch. 21, § 1; 1993, ch. 101, § 6.

## ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, substituted "Chapter 9, Article 15A NMSA 1978" for "Sections 1 through 7 of this act".

#### 9-15A-2. Definitions.

As used in the Tourism Department Act [this article]:

- A. "commission" means the tourism commission;
- B. "department" means the tourism department; and
- C. "secretary" means the secretary of tourism.

**History:** Laws 1991, ch. 21, § 2; 1993, ch. 101, § 7.

## ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, deleted "economic development and" preceding "tourism" in Subsection A.

#### 9-15A-3. Department established.

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

- A. the travel and marketing division;



- B. the New Mexico magazine division; and
- C. the administrative services division.

**History:** Laws 1991, ch. 21, § 3; 1995, ch. 163, § 2.

### **ANNOTATIONS**

**The 1995 amendment**, effective July 1, 1995, substituted "three" for "two" preceding "division" in the introductory language, added Subsection C, and made minor stylistic changes in Subsections A and B.

**Temporary provisions.** — Laws 1996 (1st S.S.), ch. 7, § 1, effective July 1, 1996, provides that all personnel, money, appropriations, records, property, equipment and supplies belonging to the intertribal Indian ceremonial association are transferred to the tourism department for the purpose of promoting the annual intertribal Indian ceremonial and preserving traditional rites and ceremonials of Indian tribes and pueblos. Laws 2002, ch. 43, § 1, effective March 4, 2002, transfers this same personnel and property to the city of Gallup for use for the same purposes.

#### **9-15A-4. Purpose.**

The purpose of the Tourism Department Act [this article] is to create a cabinet-level department in order to:

- A. provide a coordinated statewide perspective with regard to tourism activities;
- B. provide a data base for local and regional tourism groups and serve as a comprehensive source of information and assistance to tourism-related businesses wishing to locate, expand or do business in New Mexico; and
- C. monitor the progress of state-supported tourism activities and prepare annual reports of such activities, their status and their impact.

**History:** Laws 1991, ch. 21, § 4.

#### **9-15A-4.1. Tourism revenue [sic] 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 word "sic" in the section catchline was inserted by the compiler. It was not enacted by the legislature and is not part of the law. The correct reference is the tourism enterprise fund.

**Effective dates.** — Laws 2003, ch. 299 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 [this article], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

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

(3) organize the department into those organizational units he deems will enable it to function most efficiently;

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

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

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

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

(8) prepare an annual budget of the department based upon the five-year tourism plan approved by the commission. This plan shall be updated and approved annually by the commission;

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

(a) minimize or eliminate duplication of services;

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

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

(10) appoint a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act [10-9-1 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 [this article], the secretary shall:

- A. work with and provide staff support to the commission in formulating and implementing the state's five-year tourism plan;
- B. advise the commission of proposed rules, regulations, projects and contractual arrangements;
- C. enter into contracts with state, federal or private entities, apply for and accept any state, federal or private funds or grants for such projects and accept similar donations and bequests from any source;
- D. maintain and update records on the status of all completed and ongoing projects of the department; and

E. perform such other duties as requested by the commission in order to further the purposes of the Tourism Department Act.

**History:** Laws 1991, ch. 21, § 7; 1993, ch. 101, § 9.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, deleted "economic development and" preceding "tourism" in Subsection A.

#### **9-15A-7.1. Secretary; additional duties; promotion of Indian arts, crafts and culture.**

In addition to the secretary's responsibility for the overall supervision of the department, the secretary shall:

A. encourage the preservation and development of Indian arts and crafts among the Indian tribes and pueblos of the state;

B. encourage the preservation of traditional rites and ceremonials of Indian tribes and pueblos to increase knowledge and appreciation of those arts, crafts, rites and ceremonials; and

C. promote the intertribal Indian ceremonial association, incorporated, located in Gallup.

**History:** Laws 1996, ch. 25, § 1.

#### **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.

### **9-15A-9. Commission; powers and duties.**

The commission shall:

A. develop and recommend policies and provide policy and program guidance for the department;

B. review, modify and approve annual updates to the state's five-year tourism plan generated by the department; and

C. establish such rules and regulations for its own operations as are necessary to achieve the purposes of the Tourism Department Act [this article]. Rules and regulations of the commission shall be adopted in the same procedural manner as rules and regulations of the department are adopted and shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** 1978 Comp., § 9-15A-9, enacted by Laws 1993, ch. 101, § 11.

# **ARTICLE 16**

## **Regulation and Licensing Department**

### **9-16-1. Short title.**

Section 7 through 29 [9-16-1 to 9-16-13 NMSA 1978] of this act may be cited as the "Regulation and Licensing Department Act".

**History:** Laws 1983, ch. 297, § 17.

### **9-16-2. Purpose.**

The purpose of the Regulation and Licensing Department Act [9-16-1 to 9-16-13 NMSA 1978] is to create a single, unified department to administer all laws and exercise all functions formerly administered and exercised by the financial institutions division, the construction industries division and the mobile housing division of the commerce and industry department.

**History:** Laws 1983, ch. 297, § 18.

## **ANNOTATIONS**

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

### **9-16-3. Definitions.**

As used in the Regulation and Licensing Department Act [9-16-1 to 9-16-13 NMSA 1978]:

- A. "department" means the regulation and licensing department; and
- B. "superintendent" means the superintendent of regulation and licensing.

**History:** Laws 1983, ch. 297, § 19.

### **9-16-4. Department established.**

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

- A. the administrative services division;

- B. the construction industries division;
- C. the financial institutions division;
- D. the securities division;
- E. the manufactured housing division; and
- F. the alcohol and gaming division.

**History:** Laws 1983, ch. 297, § 20; 1985, ch. 173, § 1; 1988, ch. 102, § 1; 2001, ch. 86, § 1.

### **ANNOTATIONS**

**Cross references.** — For financial institutions and regulations and securities generally, see Chapter 58 NMSA 1978.

For construction industries licensing, see 60-13-1 NMSA 1978 et seq.

For manufactured housing, see 60-14-1 NMSA 1978 et seq.

**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.

#### **9-16-6. Superintendent; duties and general powers.**

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

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



(1) except as otherwise provided in the Regulation and Licensing Department Act [9-16-1 to 9-16-13 NMSA 1978], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

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

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

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

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

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

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

(8) prepare an annual budget of the department;

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

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

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

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

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act [10-9-1 NMSA 1978]. Persons appointed to these positions shall serve at the pleasure of the superintendent;

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

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

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

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

**History:** Laws 1983, ch. 297, § 22.

## ANNOTATIONS

**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 [10-9-1 NMSA 1978].

**History:** Laws 1983, ch. 297, § 23.

### **9-16-8. Bureaus; chiefs.**

The superintendent shall establish within each division such "bureaus" as he deems necessary to carry out the provisions of the Regulation and Licensing Department Act [9-16-1 to 9-16-13 NMSA 1978]. He shall appoint a "chief" to be the administrative head of any such bureau. The positions so appointed may be exempted from the Personnel Act [10-9-1 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 [10-9-1 NMSA 1978].

**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, 10-9-1 NMSA 1978 et seq.; if a classified position is to become exempt from the provisions of the Personnel Act, then it must first become vacant. 1983 Op. Att'y Gen. No. 83-3.

### **9-16-9. Administrative services division; duties.**

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

- (1) keeping all official records of the department;
- (2) providing clerical services in the areas of personnel and budget preparation; and
- (3) providing clerical, record-keeping and administrative support to agencies administratively attached to the department.

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

**History:** Laws 1983, ch. 297, § 25.

### **9-16-10. Organizational units of department; powers and duties specified by law; access to information.**

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the superintendent, and he shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 22 [9-16-6 NMSA 1978] of this act. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law.

**History:** Laws 1983, ch. 297, § 26.

### **9-16-11. Director of financial institutions division; securities division; exemptions from authority of superintendent.**

The responsibilities of the director of the financial institutions division, the director of the securities division and those of the chief of the savings and loan bureau under Sections 58-1-20 through 58-1-22, 58-1-25, 58-1-26, 58-1-28, 58-1-29, 58-1-34, 58-1-38, 58-1-46, 58-1-48, 58-1-54 through 58-1-58, 58-1-61, 58-1-62, 58-1-64, 58-1-65, 58-1-69, 58-1-72 through 58-1-75, 58-1-85, 58-2-5, 58-4-3, 58-4-4, 58-4-7, 58-4-9, 58-4-11, 58-5-2, 58-5-3, 58-7-9, 58-9-7 through 58-9-10, 58-10-11 through 58-10-14, 58-10-16, 58-10-17, 58-10-28, 58-10-32, 58-10-35, 58-10-46, 58-10-53, 58-10-72, 58-10-73, 58-10-76, 58-10-77, 58-10-79 through 58-10-85, 58-10-87, 58-10-92, 58-10-94, 58-10-97, 58-10-101, 58-11-3, 58-11-5, 58-11-6, 58-11-8, 58-11-24, 58-11-26, 58-11-32, 58-12-3, Subsection C of Section 58-12-4, 58-12-7, 58-12-8, 58-12-13, 58-15-5, 58-15-8 through 58-15-13, 58-15-18, 58-15-25, 58-20-1, 61-18-5, 61-18-6, 61-18-16, 61-18-19, 61-18-22, 61-18-33, 61-18-34, 61-18-41, 61-18-46, 61-18-47, 61-18-49, 61-18-50, 61-18-52, 61-18-53 and 61-18-57 NMSA 1978 and Subsections A, B and D of Section 28, Sections 13, 16, 20 through 36, 38, 44, 48, 51, 53 and 56 of the New Mexico Securities Act of 1986 are hereby explicitly exempted from the authority of the superintendent of regulation and licensing as set forth in Subsection B of Section 9-16-6 NMSA 1978.

**History:** Laws 1983, ch. 297, § 27; 1985, ch. 173, § 2; 1986, ch. 7 § 57.

## **ANNOTATIONS**

**Severability clauses.** — Laws 1986, ch. 7, § 60 provides for the severability of the act if any part or application thereof is held invalid.

**Compiler's notes.** — Sections 61-18-5, 61-18-6, 61-18-16, 61-18-19, 61-18-22, 61-18-33, 61-18-34, 61-18-41, 61-18-46, 61-18-47, 61-18-49, 61-18-50, 61-18-52, 61-18-53 and 61-18-57 NMSA 1978, referred to near the end of this section, were repealed by Laws 1987, ch. 252, § 34. Present comparable provisions may be found at 61-18A-1 to 61-18A-33 NMSA 1978.

**New Mexico Securities Act of 1986.** — Subsections A, B and D of Section 28, and Sections 13, 16, 20 through 36, 38, 44, 48, 51, 53 and 56 of the New Mexico Securities Act of 1986, referred to near the end of this section, are compiled as 58-13B-28A, B and D, 58-13B-13, 58-13B-16, 58-13B-20 to 58-13B-36, 58-13B-38, 58-13B-44, 58-13B-48, 58-13B-51, 58-13B-53 and 58-13B-56, respectively.

## **9-16-12. Construction industries commission; exercise of powers and duties exempt from authority of superintendent.**

All responsibilities of the construction industries commission under Sections 60-13-6, 60-13-9 through 60-13-11, 60-13-13.2, 60-13-14 through 60-13-16, 60-13-18, 60-13-23 through 60-13-24, 60-13-27, 60-13-28, 60-13-36, 60-13-38, 60-13-41, 60-13-43, 60-13-44, 60-13-45, 60-13-49, 60-13-53, 60-13-55, 60-13-57, 61-1-1 through 61-1-33, 70-5-3 through 70-5-7, 70-5-11 through 70-5-15 and 70-5-18 NMSA 1978 are hereby explicitly exempted from the authority of the superintendent under the provisions of Subsection B of Section 9-16-6 NMSA 1978.

**History:** Laws 1983, ch. 297, § 28; 1989, ch. 6, § 65.

## **9-16-13. Mobile [manufactured] housing committee; exercise of powers and duties exempt from authority of superintendent.**

All responsibilities of the mobile [manufactured] housing committee under Sections 60-14-4 through 60-14-9, 60-14-12 and 60-14-14 NMSA 1978 are hereby explicitly exempted from the authority of the superintendent of regulation and licensing under the provisions of Subsection B of Section 22 [9-16-6 NMSA 1978] of this act.

**History:** Laws 1983, ch. 297, § 29.

### **ANNOTATIONS**

**Bracketed material.** — Laws 1983, ch. 295, § 11, changes the name of the mobile housing committee, referred to in this section, to the manufactured housing committee. See 60-14-5 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

## **9-16-14. Regulation and licensing department operating fund.**

A. There is established in the state treasury the "regulation and licensing department operating fund" to be administered by the department.

B. All money received by the administrative services division, the construction industries division, the financial institutions division, the securities division and the manufactured housing division, other than money earmarked for revolving funds, shall be deposited with the state treasurer and held in a separate suspense account for each division. In the seventy-sixth fiscal year, all money deposited in the suspense accounts shall be transferred monthly to the general fund until the sum of all money transferred to the general fund equals the total amount deposited and transferred to the general fund from those divisions in the seventy-fourth fiscal year. All additional money deposited in the divisions' suspense accounts during the seventy-sixth fiscal year shall be transferred to the regulation and licensing department operating fund on June 30, 1988.

C. In the seventy-seventh fiscal year and each fiscal year thereafter, on the last day of each month, the department shall transfer all money received during the month from the divisions' suspense accounts to the general fund.

**History:** 1978 Comp., § 9-16-14, enacted by Laws 1987, ch. 298, § 1; 1991, ch. 217, § 1.

### **ANNOTATIONS**

**The 1991 amendment**, effective July 1, 1991, substituted "manufactured" for "mobile" in the first sentence in Subsection B; substituted "general fund" for "regulation and licensing department operating fund" at the end of Subsection C; and deleted former Subsection D, relating to appropriations.

## **ARTICLE 17**

### **General Services Department**

#### **9-17-1. Short title.**

Sections 1 through 7 [9-17-1 to 9-17-6 NMSA 1978] of this act may be cited as the "General Services Department Act".

**History:** Laws 1983, ch. 301, § 1.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 1983, ch. 301, § 7, is a temporary provision and has not been compiled. See notes following 9-17-6 NMSA 1978.

## **9-17-2. Purpose.**

The purpose of the General Services Department Act [9-17-1 to 9-17-6 NMSA 1978] is to make state government more efficient and responsive through consolidating certain state government service functions; and to establish a single, unified department to administer laws relating to services for governmental entities; and to perform other duties as provided by law.

**History:** Laws 1983, ch. 301, § 2.

## **9-17-3. General services department; creation; transfer and merger of division functions; merger and creation of divisions.**

A. The "general services department" is created. The department shall consist of those divisions created by law or executive order, as modified by executive order pursuant to Subsection C of this section, including:

- (1) the administrative services division;
- (2) the building services division;
- (3) the information systems division;
- (4) the property control division;
- (5) the purchasing division;
- (6) the risk management division; and
- (7) the transportation services division.

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

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

**History:** Laws 1983, ch. 301, § 3; 1984, ch. 64, § 1; 1994, ch. 119, § 12; 1995, ch. 161, § 1.

### **ANNOTATIONS**

**Cross references.** — For public purchases, see Chapter 13 NMSA 1978.

For information systems division, see 15-1-2 NMSA 1978.

For creation of the communications division within the general services department, see 15-2-1 NMSA 1978.

For property control, see 15-3-1 et seq. NMSA 1978.

For management of surplus property program by the general services department, see 15-4-2 and 15-4-3 NMSA 1978.

For risk management, see 15-7-2 et seq. NMSA 1978.

**The 1994 amendment**, effective May 18, 1994, deleted "but not limited to" at the end of Subsection A, added "and" in Paragraph A(6), added Paragraph A(7), and in Subsection B, added "of general services" and deleted "thereof" following "and the divisions."

**The 1995 amendment**, effective June 16, 1995, substituted "transportation services" for "motor pool" in Paragraph (7) in Subsection A.

**Appropriations.** — Laws 2002, ch. 110, § 51, effective March 6, 2002, appropriates \$6,666,667 from the capital projects fund to the general services department for expenditure in fiscal years 2002 through 2007 to continue converting the state's microwave radio system to digital technology.

#### **9-17-4. General services department; secretary; appointment; qualifications.**

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

**History:** Laws 1983, ch. 301, § 4.

#### **9-17-5. Secretary; duties and general powers.**

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

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



(1) except as otherwise provided in the General Services Department Act [9-17-1 to 9-17-6 NMSA 1978], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

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

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

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

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

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

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

(8) prepare the department's annual budget;

(9) cooperate with the heads of administratively attached agencies, and adjunct agencies, at their request, in order to:

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

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

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

(10) appoint, with the governor's consent, one "deputy secretary" and, for each division, a "director." These appointed positions are exempt from the provisions of the Personnel Act [10-9-1 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 or departments overlap or a function assigned to one department could be better performed by another department, the secretary may recommend appropriate legislation to the next session of the legislature for its approval.

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

**History:** Laws 1983, ch. 301, § 5.

### **9-17-6. General services department; administratively attached agencies.**

A. The personnel board and office are administratively attached to the general services department, as provided in Section 10-9-11 NMSA 1978.

B. The information systems council is administratively attached to the general services department as provided in Section 15-1-5 NMSA 1978.

**History:** Laws 1983, ch. 301, § 6; 1984, ch. 64, § 2.

## ANNOTATIONS

**Compiler's notes.** — Section 15-1-5 NMSA 1978, referred to in Subsection B, now provides for the creation of the commission on information and communication management.

### 9-17-7. Recompiled.

## ANNOTATIONS

**Recompilations.** — Laws 1998, ch. 22, § 1 recompiled 9-17-7 NMSA 1978, relating to the state alternative fuel program manager, as 9-5A-8 NMSA 1978, effective July 1, 1998.

## ARTICLE 18

### Labor Department

#### 9-18-1. Short title.

Chapter 9, Article 18 NMSA 1978 may be cited as the "Labor Department Act".

**History:** Laws 1987, ch. 342, § 1; 1993, ch. 16, § 1; 1993, ch. 25, § 1.

## ANNOTATIONS

**1993 amendments.** — Identical amendments to this section were enacted by Laws 1993, ch. 16, § 1, approved March 12, 1993, and Laws 1993, ch. 25, § 1, approved March 15, 1993, both effective June 18, 1993, which substituted "Chapter 9, Article 18 NMSA 1978" for "Sections 1 through 14 of this act". The section is set out above as amended by Laws 1993, ch. 25, § 1. See 12-1-8 NMSA 1978.

#### 9-18-2. Definitions.

As used in the Labor Department Act [Chapter 9, Article 18 NMSA 1978]:

A. "department" means, unless otherwise specified, the labor department created by the Labor Department Act; and

B. "secretary" means the secretary of labor.

**History:** Laws 1987, ch. 342, § 2.

#### 9-18-3. Purpose.

The purpose of the Labor Department Act [Chapter 9, Article 18 NMSA 1978] is to establish a single, unified department to administer all laws and exercise all functions formerly administered and exercised by the employment security department, the workmen's compensation administration, the labor commissioner and the office of the human rights commission.

**History:** Laws 1987, ch. 342, § 3.

#### **9-18-4. Labor department established.**

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

- A. employment security division;
- B. worker's compensation division;
- C. labor and industrial division;
- D. human rights division;
- E. job training division; and
- F. administrative services division.

**History:** Laws 1987, ch. 342, § 4.

#### **ANNOTATIONS**

**Cross references.** — For human rights, see 28-1-1 to 28-1-15 NMSA 1978.

For labor law generally, see Chapter 50 NMSA 1978.

For unemployment compensation, see Chapter 51 NMSA 1978.

For workers' compensation and subsequent injury and occupational disease disablement compensation, see Chapter 52 NMSA 1978.

#### **9-18-5. Agencies abolished.**

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

**History:** Laws 1987, ch. 342, § 5.

## ANNOTATIONS

**Compiler's notes.** — Laws 1987, ch. 342, § 36 makes the Labor Department Act effective on July 1, 1987.

### **9-18-6. Secretary of labor; appointment.**

A. The chief executive and administrative officer of the department is the secretary of labor. The secretary of labor shall also serve as the director of the employment security division. The secretary shall be appointed by the governor with the consent of the senate. The secretary shall hold office at the pleasure of the governor and shall serve in the executive cabinet.

B. A secretary who has been appointed but not yet confirmed shall serve and have all the duties, responsibilities and authority assigned by law to that office during the period of time prior to the final action by the senate to confirm or reject his appointment.

**History:** Laws 1987, ch. 342, § 6.

### **9-18-7. Secretary; duties and general powers.**

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

B. To perform his duties, the secretary has every power expressly enumerated in the laws whether granted to the secretary or the department or any division of the department, except where authority conferred upon the human rights commission is explicitly granted by Section 28-1-4 NMSA 1978 and, except for authority expressly granted to the worker's compensation division, its director or their predecessor entities under the provisions of Chapter 52, Articles 1 through 5 NMSA 1978, and except where authority conferred upon any division therein is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Labor Department Act [Chapter 9, Article 18 NMSA 1978], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

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

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

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties. The secretary shall not reduce staff below the FTE [fulltime employee] limitations of the applicable general appropriation act in the seventy-sixth fiscal year except by attrition, transfer, dismissal for cause, and by no other means, except for positions already vacant on the effective date of the law;

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

(6) conduct research and studies that will improve the operation of the department;

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

(8) prepare an annual budget of the department;

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

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

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

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

(10) appoint, with the governor's consent, for each division, a director. These appointed positions are exempt from the provisions of the Personnel Act [10-9-1 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] with the department paying the cost of such bonds; and

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

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

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

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

F. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** Laws 1987, ch. 342, § 7.

## ANNOTATIONS

**Bracketed material.** — The bracketed words in Paragraph B(4) were inserted by the compiler. It was not enacted by the legislature, and is not part of the law.

### **9-18-8. Administratively attached agencies.**

The human rights commission and the labor and industrial commission are administratively attached to the labor department in accordance with the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978].

**History:** Laws 1987, ch. 342, § 8.

### **9-18-9. Directors.**

Except as provided in Subsection A of Section 6 [9-18-6 NMSA 1978] of the Labor Department Act, the secretary shall appoint, with the approval of the governor, directors of such divisions as are established within the department. The positions so appointed are exempt from the Personnel Act [10-9-1 NMSA 1978].

**History:** Laws 1987, ch. 342, § 9.

### **9-18-10. Bureaus; chiefs.**

The secretary shall establish within each division such bureaus as he deems necessary to carry out the provisions of the Labor Department Act [this article]. He shall employ a chief to be administrative head of each bureau.

**History:** Laws 1987, ch. 342, § 10.

### **9-18-11. Personnel Act coverage.**

All employees and positions in the department, except for the positions of secretary and division director and other positions expressly permitted to be exempt by the Personnel Act [10-9-1 NMSA 1978], shall be covered by and shall be subject to the provisions of the Personnel Act [10-9-1 NMSA 1978]. The secretary is the appointing authority.

**History:** Laws 1987, ch. 342, § 11.

### **9-18-12. Cooperation with the federal government; authority of secretary; single state agency status.**

A. The department is authorized to cooperate with the federal government in the administration of employment, training and public assistance programs under the jurisdiction of the department in which financial or other participation by the federal government is authorized or mandated under federal laws, regulations, rules or orders. The secretary may enter into agreements with agencies of the federal government to implement employment, training and public assistance programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor or the secretary may designate the department or any organization unit of the department as the single state agency for the administration of any employment, training or public assistance program, either by the governor's or the secretary's own discretion or when such designation is a condition of federal financial or other participation in the program under applicable federal law, regulation, rule or order. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.



**History:** Laws 1987, ch. 342, § 12.

## ANNOTATIONS

**Appropriations.** — Laws 2003, ch. 32, § 1, appropriates one million five hundred fifty thousand dollars (\$1,550,000) from the Reed Act distribution fund, consisting of funds made available to the state of New Mexico on March 13, 2002 pursuant to Section 209 of the federal Temporary Extended Unemployment Compensation Act of 2002, to the labor department for expenditure in fiscal years 2004 through 2007 to support high school career centers in New Mexico. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the Reed Act distribution fund.

### **9-18-13. Advisory committees.**

The secretary, with the consent of the governor, may create advisory committees in accordance with the provisions of Section 9-1-9 NMSA 1978. The secretary shall appoint the members of advisory committees with the consent of the governor. If the existence of an advisory committee, its representational membership requirements or other matters are required or specified under any federal law, regulation, rule or order as a condition for receiving federal funds for any program administered by the department, the secretary and the governor shall comply with such requirements in creating the advisory committee.

**History:** Laws 1987, ch. 342, § 13.

### **9-18-14. Organization units of the department; powers and duties specified by law; access to information.**

A. Those organizational units of the department and the officers of those units specified by law shall have all the powers and duties enumerated in the specific laws assigned to their organizational units for administration. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary and the secretary shall retain the final decision-making authority and responsibility in accordance with the provisions of Subsection B of Section 7 [9-18-7 NMSA 1978] of the Labor Department Act. The department shall have access to all records, data and information of other departments, agencies and institutions, including its own organizational units not specifically held confidential by law.

B. Subject to the provisions of Subsection B of Section 7 of the Labor Department Act:

(1) the employment security division shall have all those powers and duties conferred by law upon the former employment security department and such other laws, programs and functions assigned to the division by the secretary with the consent of the governor;

(2) the worker's compensation division shall have all those powers and duties conferred by law upon the former workmen's compensation administration and such other laws, programs and functions assigned to the division by the secretary with the consent of the governor;

(3) the labor and industrial division shall have all those powers and duties conferred by law upon the former labor commissioner and such other laws, programs and functions assigned to the division by the secretary with the consent of the governor;

(4) the human rights division shall have all those powers and duties conferred by law upon the former executive director of the human rights commission and staff and such other laws, programs and functions assigned to the division by the secretary with the consent of the governor;

(5) the job training division shall have all those powers and duties conferred upon it by the governor pursuant to the Job Training Partnership Act and such other laws, programs and functions assigned to the division by the secretary with the consent of the governor; and

(6) the administrative services division shall have all those powers and duties conferred upon it by the secretary of labor. The secretary shall have the power, pursuant to Subsection B of Section 7 of the Labor Department Act, to transfer administrative functions and duties formerly conferred upon the chief administrative officer of any agency or department merged into the labor department by the Labor Department Act [this article].

**History:** Laws 1987, ch. 342, § 14.

### **9-18-15. Disclosure of information.**

To the extent permitted by federal law, upon the written request of a corporation organized pursuant to the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978], the department shall furnish the last known address and the date of that address of every person certified to the department as being an absent obligor of an educational debt that is due and owed to the corporation or that the corporation has lawfully contracted to collect. The corporation and its officers and employees shall use such information only for the purpose of enforcing the educational debt obligation of such absent obligors and shall not disclose that information or use it for any other purpose.

**History:** 1978 Comp., § 9-18-15 enacted by Laws 1993, ch. 16, § 2 and by Laws 1993, ch. 25, § 2.

### **ANNOTATIONS**

**Duplicate laws.** — Laws 1993, ch. 16, § 2 and Laws 1993, ch. 25, § 2 enact identical new sections of law. Both have been compiled as 9-18-15 NMSA 1978.

# **ARTICLE 19**

## **Public Safety Department**

### **9-19-1. Short title.**

Chapter 9, Article 19 NMSA 1978 may be cited as the "Department of Public Safety Act".

**History:** 1978 Comp., § 9-18-1, enacted by Laws 1987, ch. 254, § 1; 1989, ch. 204, § 1.

### **9-19-2. Definitions.**

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

- A. "department" means the department of public safety and
- B. "secretary" means the secretary of public safety.

**History:** 1978 Comp., § 9-18-2, enacted by Laws 1987, ch. 254, § 2; 1989, ch. 204, § 2.

### **9-19-3. Purpose.**

The purpose of the Department of Public Safety Act [this article] is to establish a single, unified department to consolidate state law enforcement and safety functions in order to provide better management, real coordination and more efficient use of state resources and manpower in responding to New Mexico's public safety needs and problems and to improve the professionalism of the state's law enforcement and investigative functions and personnel.

**History:** 1978 Comp., § 9-18-3, enacted by Laws 1987, ch. 254, § 3; 1989, ch. 204, § 3.

### **9-19-4. Department established.**

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

- A. the New Mexico state police division;
- B. the special investigations division;
- C. the training and recruiting division;
- D. the technical and emergency support division;

- E. the administrative services division; and
- F. the motor transportation division.

**History:** 1978 Comp., § 9-18-4, enacted by Laws 1987, ch. 254, § 4; 1989, ch. 204, § 4; 1998 (1st S.S.), ch. 10, § 3.

## **ANNOTATIONS**

**Cross references.** — For state police, see 29-2-1 to 29-2-29 NMSA 1978.

For law enforcement training, see 29-7-1 to 29-7-13 NMSA 1978.

**The 1998 amendment,** effective July 1, 1998, added Subsection F, and made minor related and stylistic changes.

**Temporary provisions.** — Laws 2002, ch. 76, § 1, effective March 5, 2002, provides that the department of public safety, in conjunction with the department of health, shall review and update the current all-hazards emergency operations plan, conduct two statewide emergency tests, the first by July 31, 2002 and the second by October 31, 2002, provide progress reports at least once every sixty days to the legislative health and human services committee or the legislative finance committee, and provide findings and recommendations for legislative initiatives and funding proposals to the committee by November 30, 2002.

Laws 2002, ch. 76, § 2, effective March 5, 2002, provides that the department of safety shall complete the activities pursuant to this act and provide its final report to the governor and the legislature by December 31, 2002.

**Appropriations.** — Laws 2002, ch. 110, § 52, effective March 6, 2002, as amended by Laws 2003, ch. 429, § 138 appropriates \$4,791,684 from the capital projects fund to the department of public safety for expenditure in fiscal years 2002 through 2007 to complete work on a platform static scale at the Dona Ana port of entry and to plan, construct, and equip a new port of entry in Orogrande.

### **9-19-5. Secretary; appointment.**

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

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

**History:** 1978 Comp., § 9-18-5, enacted by Laws 1987, ch. 254, § 5.

## **9-19-6. Secretary; duties and general powers.**

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

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

(1) except as otherwise provided in the Department of Public Safety Act [this article], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations; provided that the secretary shall not reduce positions for the seventy-sixth fiscal year budgeted in the General Appropriation Act of 1987 except for cause, by attrition or by occurrence of a vacancy;

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

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

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

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

(6) conduct research and studies that will improve the operation of the department and examine other entities and functions of state government related to public safety for purposes of possible transfer to the department;

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

(8) prepare an annual budget of the department;

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

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

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

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

(10) appoint, with the governor's consent, for each division, a director. These appointed positions are exempt from the provisions of the Personnel Act [10-9-1 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 he deems necessary as provided in the Surety Bond Act with the department paying the costs of such bonds.

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

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

E. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the

regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation in the state and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing.

F. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

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

### **9-19-6.1. [Secretary; duty to develop career pay system for state police.]**

In addition to all other duties established in Section 9-19-6 NMSA 1978, the secretary, in consultation with the chief of the New Mexico state police, shall develop a career pay system for the state police. This career pay system shall consist of steps within salary ranges based on objective criteria developed by the secretary. This career pay system shall allow an officer to progress on a career ladder with appropriate salary steps linked to a recognition of additional training, skills acquired and other meritorious performance.

**History:** 1978 Comp., § 9-19-6.1, enacted by Laws 1989, ch. 72, § 1.

### **9-19-7. Organizational units of department; powers and duties specified by law; access to information.**

A. The organizational units of the department and the officers of those units specified by law shall have all the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, who shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 9-19-6 NMSA 1978. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law.

B. The New Mexico state police division shall consist of the commissioned officers and civilian personnel including all communications equipment operators of the New Mexico state police uniform division and the commissioned officers and civilian personnel of the New Mexico state police criminal division and such other personnel as may be assigned by the secretary or by the governor pursuant to an executive order as authorized in the Department of Public Safety Act [this article].

C. The special investigations division shall consist of the staff of the governor's organized crime prevention commission, the enforcement personnel of the department of alcoholic beverage control and such other personnel as may be assigned by the secretary or by the governor pursuant to an executive order as authorized in the Department of Public Safety Act [Chapter 9, Article 19 NMSA 1978]. The division is responsible for the enforcement of the Bingo and Raffle Act [60-2B-1 to 60-2B-14 NMSA 1978] and the Liquor Control Act [60-3A-1 NMSA 1978].

D. The technical and emergency support division shall consist of the emergency planning and coordination bureau of the department of public safety, the personnel of the hazardous materials emergency response program or plan and such other functions as communications, crime laboratory and records.

E. The training and recruiting division shall consist of the personnel of the New Mexico law enforcement academy, the New Mexico state police training division and all other training personnel and functions of the department as the secretary may transfer to this division.

F. The administrative services division shall consist of the administrative services and services divisions of the New Mexico state police and those administrative support personnel of the other existing departments, divisions or offices as the secretary deems necessary.

**History:** 1978 Comp., § 9-18-7, enacted by Laws 1987, ch. 254, § 7; 1989, ch. 204, § 6.

### **9-19-8. Administratively attached agencies.**

The governor's organized crime prevention commission and the New Mexico law enforcement academy board are administratively attached to the department in accordance with the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978].

**History:** 1978 Comp., § 9-18-8, enacted by Laws 1987, ch. 254, § 8; 1989, ch. 204, § 7.

### **9-19-9. Directors.**

The secretary shall appoint, with the approval of the governor, directors of the divisions as are established within the department; provided, the director of the New Mexico state police division shall be titled the "chief of the New Mexico state police". The positions so appointed are exempt from the Personnel Act [10-9-1 NMSA 1978].

**History:** 1978 Comp., § 9-18-9, enacted by Laws 1987, ch. 254, § 9.

### **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 [Chapter 9,



Article 19 NMSA 1978]. He shall employ a chief to be administrative head of each bureau.

**History:** 1978 Comp., § 9-18-10, enacted by Laws 1987, ch. 254, § 10; 1989, ch. 204, § 8.

### **9-19-11. Advisory commission.**

A. There is created the "public safety advisory commission" composed of seven citizens of New Mexico appointed by the governor with the consent of the senate for staggered terms of three years ending on January 1; provided that in making the initial appointments, three members shall be appointed for terms of three years each, two members shall be appointed for terms of two years each and two members shall be appointed for terms of one year each. Thereafter, all appointments shall be made for terms of three years.

B. The commission shall advise the secretary on policy matters respecting the activities of the department and shall conduct disciplinary proceedings for any officer of the department state police division as required by Section 29-2-11 NMSA 1978. The disciplinary hearings shall be a matter of record and shall be conducted in the manner provided for in Section 29-2-11 NMSA 1978. The commission shall serve its findings and conclusions on the secretary for execution.

**History:** 1978 Comp., § 9-18-11, enacted by Laws 1987, ch. 254, § 12; 1989, ch. 204, § 9.

## **ARTICLE 20 Youth Authority**

(Repealed by Laws 1992, ch. 57, § 56.)

### **9-20-1 to 9-20-18. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1992, ch. 57, § 56 repeals 9-20-1 to 9-20-18 NMSA 1978, as enacted by Laws 1988, ch. 101, §§ 1-16 and Laws 1990, ch. 32, §§ 1-2, relating to the Youth Authority, effective July 1, 1992. For former provisions, see 1991 Replacement Pamphlet. For present comparable provisions, see 9-2A-1 NMSA 1978 et seq.

## **ARTICLE 21 Indian Affairs Department**

### **9-21-1. Short title.**

Sections 1 through 15 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

**Effective dates.** — Laws 2004, ch. 18 and Laws 2004, ch. 24 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective May 19, 2004, 90 days after adjournment of the legislature.

**Duplicate laws.** — Laws 2004, ch. 18, § 1 and Laws 2004, ch. 24, § 1 enact identical new sections of law, effective May 19, 2004. Both have been compiled as 9-21-1 NMSA 1978. See 12-1-8 NMSA 1978.

### 9-21-2. Purpose.

The purpose of the Indian Affairs Department Act [9-21-1 NMSA 1978] 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

**Effective dates.** — Laws 2004, ch. 18 and Laws 2004, ch. 24 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective May 19, 2004, 90 days after adjournment of the legislature.

**Duplicate laws.** — Laws 2004, ch. 18, § 2 and Laws 2004, ch. 24, § 2 enact identical new sections of law, effective May 19, 2004. Both have been compiled as 9-21-2 NMSA 1978. See 12-1-8 NMSA 1978.

### 9-21-3. Definitions.

As used in the Indian Affairs Department Act [9-21-1 NMSA 1978]:

- 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

**Effective dates.** — Laws 2004, ch. 18 and Laws 2004, ch. 24 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective May 19, 2004, 90 days after adjournment of the legislature.

**Duplicate laws.** — Laws 2004, ch. 18, § 3 and Laws 2004, ch. 24, § 3 enact identical new sections of law, effective May 19, 2004. Both have been compiled as 9-21-3 NMSA 1978. See 12-1-8 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**

**Effective dates.** — Laws 2004, ch. 18 and Laws 2004, ch. 24 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective May 19, 2004, 90 days after adjournment of the legislature.

**Duplicate laws.** — Laws 2004, ch. 18, § 4 and Laws 2004, ch. 24, § 4 enact identical new sections of law, effective May 19, 2004. Both have been compiled as 9-21-4 NMSA 1978. See 12-1-8 NMSA 1978.

**Transfer of personnel, equipment and funds.** — Laws 2004, ch 18, § 17 and Laws 2004, ch. 24, § 17 provide 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

**Effective dates.** — Laws 2004, ch. 18 and Laws 2004, ch. 24 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective May 19, 2004, 90 days after adjournment of the legislature.

**Duplicate laws.** — Laws 2004, ch. 18, § 5 and Laws 2004, ch. 24, § 5 enact identical new sections of law, effective May 19, 2004. Both have been compiled as 9-21-5 NMSA 1978. See 12-1-8 NMSA 1978.

### **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 [9-21-1 NMSA 1978], 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 [10-9-1 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 [14-4-1 NMSA 1978].

History: Laws 2004, ch. 18, § 6 and Laws 2004, ch. 24, § 6.

## ANNOTATIONS

**Effective dates.** — Laws 2004, ch. 18 and Laws 2004, ch. 24 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective May 19, 2004, 90 days after adjournment of the legislature.

**Duplicate laws.** — Laws 2004, ch. 18, § 6 and Laws 2004, ch. 24, § 6 enact identical new sections of law, effective May 19, 2004. Both have been compiled as 9-21-6 NMSA 1978. See 12-1-8 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

**Effective dates.** — Neither Laws 2004, ch. 18 nor Laws 2004, ch. 24 contain effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective May 19, 2004, 90 days after adjournment of the legislature.

**Duplicate laws.** — Except for Paragraph (1) of Subsection B, Laws 2004, ch. 18, § 7 and Laws 2004, ch. 24, § 7 enact identical new sections of law, effective May 19, 2004. Both have been compiled as 9-21-7 NMSA 1978. Chapter 18, Section 7 included the following sentence that was not included in Chapter 24, Section 7: "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. See Subsection C of 12-1-8 NMSA 1978.

### **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

**Effective dates.** — Laws 2004, ch. 18 and Laws 2004, ch. 24 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective May 19, 2004, 90 days after adjournment of the legislature.

**Duplicate laws.** — Laws 2004, ch. 18, § 8 and Laws 2004, ch. 24, § 8 enact identical new sections of law, effective May 19, 2004. Both have been 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 [10-9-1 NMSA 1978].

History: Laws 2004, ch. 18, § 9 and Laws 2004, ch. 24, § 9.

### ANNOTATIONS

**Effective dates.** — Laws 2004, ch. 18 and Laws 2004, ch. 24 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective May 19, 2004, 90 days after adjournment of the legislature.

**Duplicate laws.** — Laws 2004, ch. 18, § 9 and Laws 2004, ch. 24, § 9 enact identical new sections of law, effective May 19, 2004. Both have been 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 [9-21-1 NMSA 1978]. 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 [10-9-1 NMSA 1978] unless otherwise provided by law.

History: Laws 2004, ch. 18, § 10 and Laws 2004, ch. 24, § 10.

### ANNOTATIONS

**Effective dates.** — Laws 2004, ch. 18 and Laws 2004, ch. 24 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective May 19, 2004, 90 days after adjournment of the legislature.

**Duplicate laws.** — Laws 2004, ch. 18, § 10 and Laws 2004, ch. 24, § 10 enact identical new sections of law, effective May 19, 2004. Both have been 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

**Effective dates.** — Laws 2004, ch. 18 and Laws 2004, ch. 24 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective May 19, 2004, 90 days after adjournment of the legislature.

**Duplicate laws.** — Laws 2004, ch. 18, § 11 and Laws 2004, ch. 24, § 11 enact identical new sections of law, effective May 19, 2004. Both have been 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

**Effective dates.** — Laws 2004, ch. 18 and Laws 2004, ch. 24 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective May 19, 2004, 90 days after adjournment of the legislature.

**Duplicate laws.** — Laws 2004, ch. 18, § 12 and Laws 2004, ch. 24, § 12 enact identical new sections of law, effective May 19, 2004. Both have been 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 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

History: Laws 2004, ch. 18, § 13 and Laws 2004, ch. 24, § 13.

### ANNOTATIONS

**Effective dates.** — Laws 2004, ch. 18 and Laws 2004, ch. 24 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective May 19, 2004, 90 days after adjournment of the legislature.

**Duplicate laws.** — Laws 2004, ch. 18, § 13 and Laws 2004, ch. 24, § 13 enact identical new sections of law, effective May 19, 2004. Both have been 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

**Effective dates.** — Laws 2004, ch. 18 and Laws 2004, ch. 24 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective May 19, 2004, 90 days after adjournment of the legislature.

**Duplicate laws.** — Laws 2004, ch. 18, § 14 and Laws 2004, ch. 24, § 14 enact identical new sections of law, effective May 19, 2004. Both have been compiled as 9-21-14 NMSA 1978. See 12-1-8 NMSA 1978.

### **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**

**Effective dates.** — Laws 2004, ch. 18 and Laws 2004, ch. 24 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective May 19, 2004, 90 days after adjournment of the legislature.

**Duplicate laws.** — Laws 2004, ch. 18, § 1 and Laws 2004, ch. 24, § 1 enact identical new sections of law, effective May 19, 2004. Both have been compiled as 9-21-1 NMSA 1978. See 12-1-8 NMSA 1978.

### **9-21-16. New Mexico office of Indian affairs; successor agency; duty.**

The New Mexico office of Indian affairs, or a successor agency, 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 1978.

History: Laws 2004, ch. 46, § 16.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 46 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

# ARTICLE 22

## Veterans' Services Department

### 9-22-1. Short title.

Sections 1 through 20 of this act may be cited as the "Veterans' Services Department Act".

History: Laws 2004, ch. 19, § 1.

#### ANNOTATIONS

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

### 9-22-2. Purpose.

The purpose of the Veterans' Services Department Act [9-22-1 NMSA 1978] 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

### 9-22-3. Definitions.

As used in the Veterans' Services Department Act [9-22-1 NMSA 1978]:

- A. "department" means the veterans' services department;
- B. "secretary" means the secretary of veterans' services; and
- C. "veteran" means a New Mexico resident who:

(1) is a citizen of the United States;

(2) was regularly enlisted, drafted, inducted or commissioned in the armed forces of the United States and was accepted for and assigned to active duty in the armed forces of the United States; and

(3) was not separated from such service under circumstances amounting to dishonorable discharge.

History: Laws 2004, ch. 19, § 3.

#### **ANNOTATIONS**

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

#### **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 state approving division; and
- D. the state benefits division.

History: Laws 2004, ch. 19, § 4.

#### **ANNOTATIONS**

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

**Transfer of personnel, equipment and funds.** — Laws 2004, ch. 19, § 30, effective May 19, 2004, provides 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.

**Appropriations.** — Laws 2004, ch. 19, § 32 appropriates \$210,000 from the general fund to the veterans' services department for expenditure in fiscal year 2005.

#### **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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 [9-22-1 NMSA 1978], 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 [14-4-1 NMSA 1978].

History: Laws 2004, ch. 19, § 6.

### ANNOTATIONS

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

#### **9-22-7. Department responsibilities.**

The department is responsible for:

- A. assisting veterans, their surviving spouses and their children in the preparation, presentation and prosecution of claims against the United States arising by reason of military or naval service;
- B. assisting veterans, their surviving spouses and their children 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, their surviving spouses and their children; 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.

### ANNOTATIONS

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

#### **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 of the Veterans' Services Department Act [9-22-6 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: Laws 2004, ch. 19, § 8.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 19 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 [10-9-1 NMSA 1978].

History: Laws 2004, ch. 19, § 9.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 19 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 [9-22-1 NMSA 1978]. 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 [10-9-1 NMSA 1978], unless otherwise provided by law.

History: Laws 2004, ch. 19, § 10.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 19 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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, record-keeping 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.

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.

#### **ANNOTATIONS**

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

#### **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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

## **9-22-13. State approving division.**

A. The state approving division is the state approving agency for the purposes of 38 USCA Section 3671.

B. The state approving division 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 division shall be in accordance with the provisions of Title 38 of the United States Code.

History: Laws 2004, ch. 19, § 13.

### **ANNOTATIONS**

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

## **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 transitional living, housing, health care and 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 state funeral honors and burial program and state veterans' cemeteries, monuments and museums.

History: Laws 2004, ch. 19, § 14.

### **ANNOTATIONS**

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

## **9-22-15. Veterans' services advisory board; created; purpose.**

A. The "veterans' services advisory board" is created, composed of five members from different geographical regions of the state who shall be veterans appointed by the governor. Members of the board shall serve at the pleasure of the governor. Members of the board may be paid per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

B. The veterans' services advisory board shall advise the secretary and the department on matters related to veterans.

History: Laws 2004, ch. 19, § 15.

### ANNOTATIONS

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

### **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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 of the Veterans' Services Department Act [9-22-18 NMSA 1978].

History: Laws 2004, ch. 19, § 19.

#### **ANNOTATIONS**

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

# ARTICLE 23

## Aging and Long-Term Services Department

### 9-23-1. Short title.

Sections 1 through 11 of this act may be cited as the "Aging and Long-Term Services Department Act" [9-23-1 to 9-23-11 NMSA 1978].

History: Laws 2004, ch. 23, § 1.

### ANNOTATIONS

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

**Transfer of personnel, equipment and funds.** — Laws 2004, ch. 23, § 13, effective May 19, 2004, provides for the transfer of functions, personnel, appropriations, money, records, equipment, supplies, other property and contractual obligations of the state agency on aging to the aging and long-term care department pursuant to executive order issued in accordance with Laws 2003, Chapter 403 and provides that all statutory references to the state agency on aging shall be deemed to be references to the aging and long-term services department. The functions of the traumatic brain injury program, the home- and community based medicaid waiver program for the disabled and elderly are transferred to the aging and long-term services department. By no later than January 1, 2006 the functions of the adult protective services, adult day care, attendant care and other home- and community-based long-term care programs that serve seniors or adults with disabilities are transferred from the children, youth and families department are transferred to the aging and long-term services department.

### 9-23-2. Purpose.

The purpose of the Aging and Long-Term Services Department Act [9-23-1 NMSA 1978] 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, 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

**Effective dates.** — Laws 2004, ch. 23 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 [9-23-1 NMSA 1978]:

- 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.



## **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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 [9-23-1 NMSA 1978], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as 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 [10-9-1 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 [14-4-1 NMSA 1978].

History: Laws 2004, ch. 23, § 6.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 23 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 [10-9-1 NMSA 1978].

History: Laws 2004, ch. 23, § 7.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 23 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 [9-23-1 NMSA 1978]. 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

## **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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

### **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 [9-23-1 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: Laws 2004, ch. 23, § 11.

#### **ANNOTATIONS**

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

### **9-23-12. State agency on aging; successor agency; 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**

**Effective dates.** — Laws 2004, ch. 46 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

## **ARTICLE 24**

### **Public Education Department and Commission**

### **9-24-1. Short title.**

Sections 1 through 12 of this act may be cited as the "Public Education Department Act".

History: Laws 2004, ch. 27, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 27 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

### **9-24-2. Purpose.**

The purpose of the Public Education Department Act [9-24-1 NMSA 1978] 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

### **9-24-3. Definitions.**

As used in the Public Education Department Act [9-24-1 NMSA 1978]:

- 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

## **9-24-4. Department created.**

The "public education department" is created in the executive branch. The department is a cabinet department. 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. The secretary shall make recommendations to the first session of the forty-seventh legislature on the statutory organization of the department, and until that time, references in law to the Indian education division, the vocational education division, the vocational rehabilitation division, the instructional material bureau or other statutorily created divisions and bureaus shall be deemed to be references to the appropriate organizational unit to which the secretary has assigned those statutory duties.

History: Laws 2004, ch. 27, § 4.

### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 27 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

### **ANNOTATIONS**

**Transfer of personnel, equipment and funds.** — Laws 2004, ch 25, § 27, effective May 19, 2004, provides for the transfer of all appropriations, money, personnel, records, files, furniture, equipment, supplies and other property and all contractual obligations of the state department of public education are transferred to the public education department. All statutory references to the state board of education or state department of public education are deemed to be references to the public education department. All statutory references to the state superintendent or the superintendent of public instruction shall be deemed to be references to the secretary of public education.

## **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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

### **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 [10-9-1 NMSA 1978].

History: Laws 2004, ch. 27, § 6.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 27 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 [9-24-1 NMSA 1978]. He shall employ a chief to be the administrative head of each bureau. The chiefs and all subsidiary employees of the department shall be covered by the Personnel Act [10-9-1 NMSA 1978].

History: Laws 2004, ch. 27, § 7.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 27 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 [9-24-1 NMSA 1978] or the Public School Code [22-1-1 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 [14-4-1 NMSA 1978].

History: Laws 2004, ch. 27, § 8.

### ANNOTATIONS

**Effective dates.** — Laws 2004, ch. 27 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

### 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 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

### **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 of the Public Education Department Act [9-24-1 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: Laws 2004, ch. 27, § 10.

### ANNOTATIONS

**Effective dates.** — Laws 2004, ch. 27 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 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 NMSA 1978].

History: Laws 2004, ch. 27, § 11.

### ANNOTATIONS

**Effective dates.** — Laws 2004, ch. 27 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.