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SENATE BILL 26

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2011

INTRODUCED BY

Tim Eichenberg

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; ELIMINATING THE DEPARTMENT OF INFORMATION TECHNOLOGY; CREATING THE INFORMATION TECHNOLOGY DIVISION WITHIN THE GENERAL SERVICES DEPARTMENT; ENACTING THE INFORMATION TECHNOLOGY ACT; PROVIDING FOR TRANSFERS OF FUNCTIONS, PERSONNEL, PROPERTY, OBLIGATIONS AND REFERENCES; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTIONS OF LAW BY REPEALING LAWS 2007, CHAPTER 288, SECTIONS 2 AND 3; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 9-17-3 NMSA 1978 (being Laws 1983, Chapter 301, Section 3, as amended) is amended to read:

"9-17-3. GENERAL SERVICES DEPARTMENT--CREATION--TRANSFER AND MERGER OF DIVISION FUNCTIONS--MERGER AND CREATION OF

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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 property control division;
- (4) the purchasing division;
- (5) the risk management division; ~~and~~
- (6) the transportation services division; and
- (7) the information technology 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."

SECTION 2. A new section of Chapter 15 NMSA 1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 2 through 5 of this act and the sixteen sections that are recompiled in this 2011 act may be cited as the "Information Technology Act".

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1 SECTION 3. A new section of Chapter 15 NMSA 1978 is
2 enacted to read:

3 "[NEW MATERIAL] DEFINITIONS.--As used in the Information
4 Technology Act:

5 A. "department" means the general services
6 department;

7 B. "director" means the director of the information
8 technology division of the general services department and the
9 chief information officer;

10 C. "division" means the information technology
11 division of the general services department;

12 D. "information technology" means computer hardware
13 and software and ancillary products and services, including:

14 (1) systems design and analysis;

15 (2) acquisition, storage and conversion of
16 data;

17 (3) computer programming;

18 (4) information storage and retrieval;

19 (5) voice, radio, video and data

20 communications;

21 (6) requisite systems;

22 (7) simulation and testing; and

23 (8) related interactions between users and
24 information systems;

25 E. "information technology project" means the

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1 purchase, replacement, development or modification of a
2 hardware or software system;

3 F. "secretary" means the secretary of general
4 services;

5 G. "state information architecture" means a
6 logically consistent set of principles, policies and standards
7 that guides the engineering of state government's information
8 technology systems and infrastructure in a way that ensures
9 alignment with state government's business needs; and

10 H. "state information technology strategic plan"
11 means the information technology planning document for the
12 state that spans a three-year period."

13 SECTION 4. A new section of the Chapter 15 NMSA 1978 is
14 enacted to read:

15 "[NEW MATERIAL] INFORMATION TECHNOLOGY DIVISION--DUTIES
16 AND GENERAL POWERS.--

17 A. The division shall:

18 (1) review executive agency plans regarding
19 prudent allocation of information technology resources;
20 reduction of duplicate or redundant data, hardware and
21 software; and improvement of system interoperability and data
22 accessibility among agencies;

23 (2) approve executive agency information
24 technology requests for proposals and other executive agency
25 requests that are subject to the Procurement Code, prior to

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1 final approval;

2 (3) approve executive agency information
3 technology contracts and amendments to those contracts,
4 including emergency procurements, sole source contracts and
5 price agreements, prior to approval by the department of
6 finance and administration;

7 (4) develop and implement procedures to
8 standardize data elements, determine data ownership and ensure
9 data sharing among executive agencies;

10 (5) verify compliance with state information
11 architecture and the state information technology strategic
12 plan before approving documents referred to in Paragraphs (2)
13 and (3) of this subsection;

14 (6) monitor executive agency compliance with
15 its agency plan, the state information technology strategic
16 plan and state information architecture and report to the
17 governor, executive agency management and the legislative
18 finance committee on noncompliance;

19 (7) develop information technology cost
20 recovery mechanisms and information systems rate and fee
21 structures of state agencies and other public or private sector
22 providers and make recommendations to the information
23 technology rate committee;

24 (8) provide technical support to executive
25 agencies in the development of their agency plans;

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1 (9) ensure the use of existing public or
2 private information technology or telecommunications resources
3 when the use is practical, efficient, effective and financially
4 prudent and is in compliance with the Procurement Code;

5 (10) review appropriation requests related to
6 executive agency information technology requests to ensure
7 compliance with agency plans and the state information
8 technology strategic plan and make written recommendations by
9 November 14 of each year to the department of finance and
10 administration and by November 21 of each year to the
11 legislative finance committee and the appropriate interim
12 legislative committee; provided, however, that the
13 recommendations to the legislative committees have been agreed
14 to by the division and the department of finance and
15 administration;

16 (11) provide oversight of information
17 technology projects, including ensuring adequate risk
18 management, disaster recovery and business continuity practices
19 and monitoring compliance for information technology projects
20 that affect multiple agencies;

21 (12) conduct reviews of information technology
22 projects and provide written reports to the appropriate
23 legislative oversight bodies;

24 (13) conduct background checks on division
25 employees and prospective division employees that have or will

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1 have administrative access or authority to sensitive,
2 confidential or private information or the ability to alter
3 systems, networks or other information technology hardware or
4 software; and

5 (14) perform any other information technology
6 function assigned by the governor or the secretary.

7 B. The division shall prepare a state information
8 technology strategic plan for the executive branch and update
9 it at least once every three years, which plan shall be
10 available to agencies by July 31 of each year. The plan shall
11 provide for the:

12 (1) interchange of information related to
13 information technology among executive agencies;

14 (2) coordination among executive agencies in
15 the development and maintenance of information technology
16 systems; and

17 (3) protection of the privacy and security of
18 individual information as well as of individuals using the
19 state's information technology systems.

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

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1 D. Where information technology functions of
2 executive agencies overlap or a function assigned to one agency
3 could better be performed by another agency, the division may
4 recommend appropriate legislation to the next session of the
5 legislature for its approval."

6 SECTION 5. A new section of Chapter 15 NMSA 1978 is
7 enacted to read:

8 "[NEW MATERIAL] STATE AGENCIES--DUTIES--DISPUTE.--

9 A. Each executive agency shall submit an agency
10 information technology plan to the division in the form and
11 detail required by the division. Each executive agency shall
12 conduct background checks on agency or prospective agency
13 employees that have or will have administrative access or
14 authority to alter systems, networks or other information
15 technology hardware or software.

16 B. A state agency that receives an invoice from the
17 division for services rendered to the agency shall have thirty
18 days from receipt of the invoice to pay the division or to
19 notify the division if the amount of the invoice is in dispute.
20 The state agency shall have fifteen days from its notification
21 of dispute to the division to present its reasons in writing
22 and request an adjustment. The division shall have fifteen
23 days from its receipt of the reasons for dispute to notify the
24 state agency of its decision. If the division and the state
25 agency do not agree on a resolution, the secretary of finance

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1 and administration shall make a determination on the amount
2 owed by the agency to the division. If the state agency has
3 not paid the division or notified the division of a dispute
4 within thirty days of receipt of the invoice, the division
5 shall notify the department of finance and administration and
6 request that the department of finance and administration
7 transfer funds from the state agency to the division to satisfy
8 the agency's obligation."

9 SECTION 6. Section 9-27-7 NMSA 1978 (being Laws 2007,
10 Chapter 260, Section 7, as amended) is recompiled in the
11 Information Technology Act and is amended to read:

12 "INFORMATION TECHNOLOGY RATE COMMITTEE--MEMBERSHIP--
13 DUTIES.--

14 A. The "information technology rate committee" is
15 created. The committee consists of seven members as follows:

16 (1) five members appointed by the governor
17 from executive agencies that use information technology
18 services and pay rates to an internal service fund;

19 (2) the secretary of finance and
20 administration, who shall serve as chair of the committee; and

21 (3) the secretary of [~~information technology~~]
22 general services.

23 B. The information technology rate committee shall:

24 (1) review the rate and fee schedule proposed
25 by the secretary;

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1 (2) ensure that the rate and fee schedule
2 complies with the federal office of management and budget
3 circular A-87 or its successor directive;

4 (3) consider for approval an equitable rate
5 and fee schedule based on cost recovery for state agencies that
6 use information technology services and pay rates to an
7 internal service fund, with priority service to public safety
8 agencies;

9 (4) present the committee's proposed rate and
10 fee schedule by June 1 of each year to the office of the
11 governor, the department of finance and administration and the
12 legislative finance committee; and

13 (5) by July 15 of each year, implement a rate
14 and fee schedule based on the committee's recommendations;
15 provided, however, that a reduction in rates or fees by the
16 [~~department~~] division shall not require the committee's
17 approval if the reduction is based on cost recovery and if the
18 committee is notified timely."

19 SECTION 7. Section 9-27-11 NMSA 1978 (being Laws 2008,
20 Chapter 84, Section 2, as amended) is recompiled in the
21 Information Technology Act and is amended to read:

22 "EQUIPMENT REPLACEMENT PLANS--EQUIPMENT REPLACEMENT
23 REVOLVING FUNDS.--

24 A. In order to plan for the expenditure of capital
25 investments necessary to provide goods and services to the

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1 state and its agencies and to local public bodies and other
2 enterprise customers, the [department] division shall establish
3 and maintain an equipment replacement plan for each of the
4 [~~department's~~] division's enterprise functions. No later than
5 September 1 of each year, the plans shall be submitted to the
6 department of finance and administration [~~the information~~
7 ~~technology commission~~] and the legislature, accompanied by a
8 reconciliation report of the preceding fiscal year reflecting
9 financial activity in each of the equipment replacement
10 revolving funds established pursuant to this section.

11 B. Upon the request of the [~~secretary~~] director,
12 the state treasurer shall establish in the state treasury such
13 "equipment replacement revolving funds" as are necessary to
14 administer each of the [~~department's~~] division's enterprise
15 functions. The revolving funds shall consist of legislative
16 appropriations to the funds and transfers made to the funds
17 pursuant to [~~Subsections~~] Subsection C [~~and D~~] of this section.
18 Income from investment of the revolving funds shall be credited
19 back to the funds, and money in the funds shall not revert at
20 the end of a fiscal year. Expenditures from the funds shall
21 only be made pursuant to an appropriation from the legislature
22 and only for the purpose of acquiring and replacing capital
23 equipment and associated software used to provide enterprise
24 services pursuant to the [~~department's~~] division's equipment
25 replacement plans.

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1 C. The [~~department~~] division shall record amounts
2 due to the equipment replacement revolving funds each fiscal
3 year, based on the calculation of amortization and depreciation
4 applicable to each enterprise service as reflected in the
5 [~~department's~~] division's published cost structures for
6 calculation of rates for services. Transfers to the funds
7 shall be made from the operating funds of each enterprise in
8 amounts that reconcile with the recorded amounts due. The
9 recording of amounts due to the equipment replacement revolving
10 funds and the transfer of the funds shall be consistent with
11 generally accepted accounting principles.

12 ~~[D. The department may make initial transfers from~~
13 ~~its operating funds to establish the beginning fund balances as~~
14 ~~of July 1, 2008.]"~~

15 SECTION 8. Section 9-27-13 NMSA 1978 (being Laws 1977,
16 Chapter 247, Section 23, as amended) is recompiled in the
17 Information Technology Act and is amended to read:

18 "9-27-13. TELECOMMUNICATIONS SERVICES.--

19 A. The [~~secretary of information technology~~]
20 director may hire a communications engineer to oversee the
21 engineering responsibilities of the [~~department of information~~
22 ~~technology~~] division. The communications engineer shall have a
23 degree in [~~either electrical engineering with an electrical~~
24 ~~communications specialty or in electronics engineering~~] an
25 appropriate technical field.

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1 B. In providing telecommunications services
2 pursuant to Chapter 15 NMSA 1978, the [~~department of~~
3 ~~information technology~~] division shall not provide
4 telecommunications services, including telephone, data and
5 broadband services, to an entity other than those authorized
6 pursuant to Section [~~15-5-1 NMSA 1978~~] 15 of this 2011 act,
7 except as is necessary to facilitate a state-mandated program,
8 including distance education, telehealth or school-based health
9 center programs. Before expansion or upgrade of a state-owned
10 or state-funded telecommunications network, whether voice, data
11 or video transmission, the [~~department~~] division shall prepare
12 a plan consistent with state law and applicable rules that
13 includes an assessment of how the project would potentially
14 affect local telecommunications service providers and
15 telecommunications service ratepayers."

16 SECTION 9. Section 9-27-14 NMSA 1978 (being Laws 1977,
17 Chapter 247, Section 24, as amended) is recompiled in the
18 Information Technology Act and is amended to read:

19 "RADIO COMMUNICATIONS.--The [~~department of information~~
20 ~~technology~~] division shall have supervisory control over all
21 mobile or fixed radio equipment now owned or subsequently
22 acquired by the executive branch or any state officer,
23 department, other agency, board, commission, division or bureau
24 of any executive state department or agency. This supervisory
25 control shall include but not be limited to the determination

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1 of the need for, purchase, repair, maintenance, combination or
2 disposition of radio equipment."

3 SECTION 10. Section 9-27-15 NMSA 1978 (being Laws 1997,
4 Chapter 263, Section 1, as amended by Laws 2007, Chapter 288,
5 Section 2 and by Laws 2007, Chapter 290, Section 15) is
6 recompiled in the Information Technology Act and is amended to
7 read:

8 "LEASE OF RADIO COMMUNICATIONS NETWORK--CONDITIONS AND
9 REQUIREMENTS.--In exercising supervisory control pursuant to
10 Section [~~15-2-2 NMSA 1978~~] 9 of this 2011 act, the [~~department~~
11 ~~of information technology~~] division may lease to a private
12 entity excess capacity relating to the provision of two-way
13 radio services on its radio communications property, including
14 buildings, towers or antennas, provided that:

15 A. the lease conforms with competitive procurement
16 requirements of the Procurement Code;

17 B. the lease is for an equal value exchange of
18 money or property;

19 C. the [~~secretary of information technology~~]
20 director certifies that the excess capacity will be available
21 for at least the duration of the lease;

22 D. if the lease exceeds ten years, the lease is
23 first approved by the state board of finance;

24 E. the [~~department of information technology~~]
25 division has submitted to the legislative finance committee a

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1 detailed plan for the use of excess capacity being leased and
2 an assessment of how the lease will affect public sector uses
3 and local telecommunication service providers; and

4 F. income from the leases shall be deposited to the
5 credit of the [~~department of information technology~~] division
6 and used to carry out the duties of the [~~department~~] division."

7 SECTION 11. Section 9-27-16 NMSA 1978 (being Laws 1970,
8 Chapter 71, Section 1, as amended) is recompiled in the
9 Information Technology Act and is amended to read:

10 "SERVICE CHARGE.--

11 A. The [~~department of information technology~~]
12 division shall charge a fee to the state or any officer,
13 agency, department, division, board or commission of the state
14 for any services rendered in the exercise of its supervisory
15 control.

16 B. Fees shall be fixed by the [~~secretary~~] director
17 of information technology.

18 C. Income from fees collected shall be deposited to
19 the credit of the [~~department of information technology~~]
20 division and used to carry out the duties of the [~~department~~]
21 division.

22 D. The [~~department of information technology~~]
23 division may provide two-way radio services to counties and
24 municipalities at the same rates charged state agencies."

25 SECTION 12. Section 9-27-17 NMSA 1978 (being Laws 1966,
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1 Chapter 32, Section 3, as amended) is recompiled in the
2 Information Technology Act and is amended to read:

3 "EXCLUSION FROM JURISDICTION.--The [~~department of~~
4 ~~information technology~~] division shall not have supervisory
5 control over:

6 A. the use of radio equipment, except as to the
7 technical requirements of the equipment or unless the equipment
8 is used by one or more agencies and the [~~department of~~
9 ~~information technology must determine~~] division determines
10 priority of use;

11 B. the radio equipment of the department of
12 military affairs, except the [~~department of information~~
13 ~~technology~~] division may maintain all radio equipment owned by
14 the department of military affairs that interfaces with state-
15 owned radio equipment; or

16 C. unless otherwise directed by the [~~secretary of~~
17 ~~information technology~~] director, radio equipment that is
18 incidental to a system that is primarily a telephone system."

19 SECTION 13. Section 9-27-18 NMSA 1978 (being Laws 1971,
20 Chapter 115, Section 2, as amended) is recompiled in the
21 Information Technology Act and is amended to read:

22 "PROPERTY TRANSFER.--Ownership of all radio communication
23 property at mountaintop or remote sites, including buildings,
24 towers, antennas, emergency power plants and radio equipment
25 owned by the New Mexico state police, department of

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1 transportation, department of game and fish and forestry
2 division of the energy, minerals and natural resources
3 department, is transferred to the [~~department of information~~
4 ~~technology~~] division."

5 SECTION 14. Section 9-27-19 NMSA 1978 (being Laws 1975,
6 Chapter 214, Section 4, as amended) is recompiled in the
7 Information Technology Act and is amended to read:

8 "TRANSFER OF PROPERTY--CUSTODY AND CONTROL.--The radio
9 equipment purchased in accordance with Laws 1972, Chapter 74 by
10 the property control division of the general services
11 department [~~is~~] and then transferred to the department of
12 information technology is transferred to the information
13 technology division of the general services department. The
14 [~~department~~] information technology division has the custody
15 and control of the transferred radio equipment."

16 SECTION 15. Section 9-27-20 NMSA 1978 (being Laws 1963,
17 Chapter 181, Section 1, as amended by Laws 2007, Chapter 288,
18 Section 3 and by Laws 2007, Chapter 290, Section 20) is
19 recompiled in the Information Technology Act and is amended to
20 read:

21 "TELECOMMUNICATIONS--DUTIES.--The [~~department of~~
22 ~~information technology~~] division shall enter into necessary
23 agreements to provide, where feasible, a central telephone
24 system, including wide-area telephone service, and related
25 facilities to all executive, legislative and judicial branches.

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1 Nothing in this section shall be construed to apply to the
2 provision of a central telephone system and related facilities
3 to political subdivisions of the state."

4 SECTION 16. Section 9-27-21 NMSA 1978 (being Laws 1963,
5 Chapter 181, Section 2, as amended) is recompiled in the
6 Information Technology Act and is amended to read:

7 "CENTRAL TELEPHONE SERVICES--STAFF--BUDGET.--The
8 [~~telecommunications bureau of the enterprise services~~] division
9 [~~of the department~~] shall provide the staff and material
10 necessary to properly and adequately operate the central
11 telephone system. The budget for the central telephone system
12 shall be approved as part of the total operating budget of the
13 department."

14 SECTION 17. Section 9-27-22 NMSA 1978 (being Laws 1963,
15 Chapter 181, Section 3, as amended) is recompiled in the
16 Information Technology Act and is amended to read:

17 "CHARGES FOR CENTRAL TELEPHONE SERVICES.--Departments,
18 institutions and agencies participating in the central
19 telephone system shall be charged a pro rata and equitable
20 share of the total monthly costs of the service. This
21 determination is to be made by the [~~department of information~~
22 ~~technology~~] division. Toll calls not covered by the wide-area
23 telephone service and supplemental equipment shall be
24 segregated and paid for by the agencies, institutions and
25 departments that are making the calls or using the supplemental

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1 equipment."

2 SECTION 18. Section 9-27-23 NMSA 1978 (being Laws 1963,
3 Chapter 181, Section 4, as amended) is recompiled in the
4 Information Technology Act and is amended to read:

5 "DEPOSIT OF MONEY.--The [~~department of information~~
6 ~~technology~~] division shall order the deposit or transfer
7 monthly to a fund known as the "central telephone services
8 fund" the amount of money owed by each department, institution
9 and agency utilizing the central telephone system. State
10 institutions and agencies shall adopt such accounting
11 procedures as are prescribed by the department of finance and
12 administration for the handling of payments with reference to
13 the central telephone system."

14 SECTION 19. Section 9-27-24 NMSA 1978 (being Laws 1963,
15 Chapter 181, Section 5, as amended) is recompiled in the
16 Information Technology Act and is amended to read:

17 "APPROPRIATION.--All income to the central telephone
18 services fund is appropriated to carry out the purposes of
19 Sections [~~15-5-1 through 15-5-6 NMSA 1978~~] 15 through 19 of
20 this 2011 act and Section 9-27-25 NMSA 1978 or their successor
21 recompiled sections. Payments from the central telephone
22 services fund shall be made on vouchers signed by the secretary
23 of general services or the secretary's designee."

24 SECTION 20. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,
25 APPROPRIATIONS, PERSONNEL AND PROPERTY--CONTRACTUAL

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1 OBLIGATIONS--REFERENCES IN LAW.--

2 A. All functions, appropriations, personnel, money,
3 records, furniture, equipment and other property of the
4 department of information technology are transferred to the
5 general services department.

6 B. Contractual obligations of the department of
7 information technology are binding on the general services
8 department.

9 C. All references in law to the department of
10 information technology shall be deemed to be references to the
11 information technology division of the general services
12 department.

13 D. All references in law to the secretary of
14 information technology or to the chief information officer
15 shall be deemed to be references to the director of the
16 information technology division of the general services
17 department.

18 SECTION 21. TEMPORARY PROVISION--RECOMPILATION.--Sections
19 9-27-12 and 9-27-25 NMSA 1978 (being Laws 2009, Chapter 146,
20 Section 6 and Laws 1963, Chapter 181, Section 6, as amended)
21 are recompiled in the Information Technology Act.

22 SECTION 22. REPEAL.--

23 A. Laws 2007, Chapter 288, Sections 2 and 3 are
24 repealed.

25 B. Sections 9-27-1 through 9-27-6 and 9-27-8

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1 through 9-27-10 NMSA 1978 (being Laws 2007, Chapter 290,
2 Sections 1 through 6, 8, 9 and 26, as amended) are repealed.

3 SECTION 23. EMERGENCY.--It is necessary for the public
4 peace, health and safety that this act take effect immediately.