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AN ACT
RELATING TO CIVIL RIGHTS; ESTABLISHING THE CIVIL RIGHTS
DIVISION IN THE OFFICE OF THE ATTORNEY GENERAL; AUTHORIZING
CIVIL INVESTIGATIVE DEMANDS.

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

SECTION 1. A new Section 8-5-23 NMSA 1978 is enacted to
read:

"8-5-23. CIVIL RIGHTS DIVISION--CREATED--CIVIL
INVESTIGATIVE DEMANDS.--

A. The "civil rights division" is created within
the office of the attorney general. The civil rights
division shall have the authority to investigate civil rights
violations, intervene in civil actions for civil rights
violations and bring civil actions for civil rights
violations in the name of the state when, in the attorney
general's judgment, the interest of the state requires such
prosecution.

B. The attorney general may hire employees for the
civil rights division on a full- or part-time basis, at
salaries to be fixed by the attorney general within budget
allowances and appropriation limits as the business of the
civil rights division shall require, and the attorney general
may assign duties for the civil rights division.

C. The civil rights division may issue a civil

1 investigative demand to a person or public body for the
2 production of documentary material and the inspection and
3 copying of the material when there is reason to believe the
4 person or public body is in possession, custody or control of
5 an original copy of any book, record, report, memorandum,
6 paper, communication, tabulation, map, chart, photograph,
7 mechanical transcription or other tangible document or
8 recording and the civil rights division determines the
9 material to be relevant to the subject matter of an
10 investigation. A civil investigative demand shall:

11 (1) state generally the subject matter of
12 the investigation;

13 (2) describe with reasonable certainty the
14 classes of documentary material to be produced;

15 (3) provide a date by which the documentary
16 material is to be produced, which shall be no less than ten
17 days after the date the demand is served;

18 (4) identify the members of the attorney
19 general's staff to whom the documentary material is to be
20 made available for inspection and copying; and

21 (5) contain no requirement that would be
22 unreasonable or improper if contained in a subpoena duces
23 tecum issued by a court of this state.

24 D. A person or public body that is issued a civil
25 investigative demand pursuant to Subsection C of this section

1 shall comply with that demand regardless of any
2 confidentiality provision established by state or local law.

3 E. The attorney general may petition the district
4 court for enforcement of a civil investigative demand, and,
5 in appropriate cases, the court shall order the production of
6 the documentary material required in the demand. Upon
7 petition and for good cause shown, the court may set aside or
8 modify a civil investigative demand or extend the production
9 date.

10 F. A civil investigative demand and any
11 documentary material produced in response to a civil
12 investigative demand shall not be made public or used for
13 purposes other than investigations and prosecutions by the
14 civil rights division, except as otherwise provided in this
15 section.

16 G. In lieu of beginning or continuing a civil
17 action under this section, the civil rights division may
18 accept a written assurance of the discontinuance of a civil
19 rights violation from the person or public body engaged in
20 the civil rights violation. A violation of an assurance
21 entered into pursuant to this subsection shall constitute
22 prima facie evidence of the alleged civil rights violation in
23 any civil action commenced by the civil rights division.

24 H. The civil rights division may collect
25 information upon request and make policy recommendations for

1 public bodies to adopt measures to ensure the protection of
2 civil rights. The civil rights division may publish and
3 report information, statistics, findings or conclusions
4 regarding its civil rights investigations if the release of
5 this information is in the public interest or made upon
6 request by the legislature or any appropriate legislative
7 committee; provided that the civil rights division shall
8 redact names and personal identifying information.

9 I. In the case of any conflict of interest between
10 the attorney general's duties under this section and the
11 attorney general's duty to represent an entity pursuant to
12 Section 8-5-2 NMSA 1978, the entity shall be entitled to
13 alternative representation by special counsel or as
14 determined by the risk management division of the general
15 services department.

16 J. As used in this section:

17 (1) "civil rights violation" means an act,
18 practice or pattern of conduct by any person or public body
19 that:

20 (a) subjects, or causes to be
21 subjected, other persons to the deprivation of any rights,
22 privileges or immunities secured by the constitution or laws
23 of this state or the United States; or

24 (b) interferes, or attempts to
25 interfere, by threats, intimidation or coercion with the

1 exercise or enjoyment by other persons of any rights,
2 privileges or immunities secured by the constitution of this
3 state or the United States;

4 (2) "person" means a person acting on behalf
5 of, under color of or within the course and scope of the
6 authority of a public body; and

7 (3) "public body" means a state or local
8 government, an advisory board, a commission, an agency or an
9 entity created by the constitution of New Mexico or any branch
10 of government that receives public funding, including
11 political subdivisions, special tax districts, school
12 districts and institutions of higher education, but not
13 including an acequia or community ditch, a soil and water
14 conservation district, a land grant-merced, a mutual domestic
15 water consumers association or other association organized
16 pursuant to the Sanitary Projects Act or a water users'
17 association."
