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HOUSE BILL 39

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

James Roger Madalena

FOR THE SUBCOMMITTEE ON REORGANIZATION

AN ACT

**RELATING TO EXECUTIVE ORGANIZATION; CREATING THE INDIAN AFFAIRS
DEPARTMENT; PROVIDING FOR A SECRETARY OF INDIAN AFFAIRS;
PROVIDING POWERS AND DUTIES; APPROVING TRANSFERS OF
APPROPRIATIONS, MONEY, PERSONNEL, PROPERTY, CONTRACTUAL
OBLIGATIONS AND STATUTORY REFERENCES; MAKING AN APPROPRIATION.**

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

**Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 14 of this act may be cited as the "Indian Affairs
Department Act".**

**Section 2. [NEW MATERIAL] PURPOSE. -- The purpose of the
Indian Affairs Department Act is to create a single, unified
department to administer all laws and exercise all functions
formerly administered and executed by the New Mexico office of
Indian affairs.**

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1 Section 3. [NEW MATERIAL] DEFINITIONS. -- As used in the
2 Indian Affairs Department Act:

3 A. "department" means the Indian affairs
4 department; and

5 B. "secretary" means the secretary of Indian
6 affairs.

7 Section 4. [NEW MATERIAL] DEPARTMENT CREATED. -- The
8 "Indian affairs department" is created in the executive branch.
9 The department is a cabinet department and includes the
10 following divisions:

11 A. the administrative services division; and

12 B. the program services division.

13 Section 5. [NEW MATERIAL] SECRETARY OF INDIAN AFFAIRS. --

14 A. The chief executive and administrative officer
15 of the department is the "secretary of Indian affairs". The
16 secretary shall be appointed by the governor with the consent
17 of the senate. The secretary shall hold the office at the
18 pleasure of the governor and shall serve in the executive
19 cabinet.

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

24 Section 6. [NEW MATERIAL] SECRETARY-- DUTIES AND GENERAL
25 POWERS. --

. 148494. 1

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

6 B. To perform his duties, the secretary has every
7 power expressly enumerated in the laws, whether granted to the
8 secretary or any division of the department, except where
9 authority conferred upon any division in the department is
10 explicitly exempted from the secretary's authority by statute.

11 In accordance with these provisions, the secretary shall:

12 (1) except as otherwise provided in the Indian
13 Affairs Department Act, exercise general supervisory and
14 appointing authority over all department employees, subject to
15 any applicable personnel laws and rules;

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

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

23 (4) within the limitations of available
24 appropriations and applicable laws, employ and fix the
25 compensation of those persons necessary to discharge the

1 secretary' s duties;

2 (5) take administrative action by issuing
3 orders and instructions, not inconsistent with the law, to
4 ensure implementation of and compliance with the provisions of
5 law with the administration or execution of which the secretary
6 is responsible, and to enforce those orders and instructions by
7 appropriate administrative action or actions in the courts;

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

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

16 (8) prepare an annual budget of the
17 department;

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

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

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

24 (c) resolve by agreement the manner and
25 extent to which the department shall provide budgeting.

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1 record-keeping and related clerical assistance to
2 administratively attached agencies; and

3 (10) appoint, with the governor's consent, for
4 each division, a "director". These appointed positions are
5 exempt from the provisions of the Personnel Act. Persons
6 appointed to these positions shall serve at the pleasure of the
7 secretary.

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

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

18 E. The secretary may make and adopt such reasonable
19 procedural rules as may be necessary to carry out the duties of
20 the department and its divisions. A rule promulgated by the
21 director of a division in carrying out the functions and duties
22 of the division shall not be effective until approved by the
23 secretary. Unless otherwise provided by statute, a rule
24 affecting a person or agency outside the department shall not
25 be adopted, amended or repealed without a public hearing on the

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1 proposed action before the secretary or a hearing officer
2 designated by the secretary. The public hearing shall be held
3 in Santa Fe unless otherwise permitted by statute. Notice of
4 the subject matter of the rule, the action proposed to be
5 taken, the time and place of the hearing, the manner in which
6 interested persons may present their views and the method by
7 which copies of the proposed rule, proposed amendment or repeal
8 of an existing rule may be obtained shall be published once at
9 least thirty days prior to the hearing date in a newspaper of
10 general circulation and mailed at least thirty days prior to
11 the hearing date to all persons who have made a written request
12 for advance notice of hearing. All rules shall be filed in
13 accordance with the State Rules Act.

14 Section 7. [NEW MATERIAL] DEPARTMENT-- ADDITIONAL POWERS
15 AND DUTIES. --

16 A. The department is the coordinating agency for
17 intergovernmental and interagency programs concerning tribal
18 governments and the state.

19 B. The department shall:

20 (1) investigate, study, consider and act upon
21 the entire subject of Indian conditions and relations within
22 New Mexico, including problems of health, economy and education
23 and the effect of local, state and federal legislative,
24 executive and judicial actions. In performing its functions,
25 the department shall provide an opportunity for the

. 148494. 1

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1 presentation and exchange of ideas in respect to Indian affairs
2 of the state by all interested persons; and

3 (2) assist in setting the policy, and act as
4 the clearinghouse, for all state programs affecting the Indian
5 people of New Mexico.

6 C. The department may:

7 (1) hold hearings, conduct meetings, make
8 investigations and confer with officials of local, state and
9 federal agencies to secure cooperation between the local,
10 state, federal and Indian tribal governments in the promotion
11 of the welfare of the Indian people of New Mexico;

12 (2) contract with tribal governments, public
13 agencies or private persons to provide services and facilities
14 for promoting the welfare of the Indian people of New Mexico;
15 and

16 (3) solicit and accept gifts, grants,
17 donations, bequests and devises.

18 Section 8. [NEW MATERIAL] ORGANIZATIONAL UNITS OF THE
19 DEPARTMENT-- POWERS AND DUTIES SPECIFIED BY LAW - ACCESS TO
20 INFORMATION. --

21 A. Those organizational units of the department and
22 the officers of those units specified by law shall have all of
23 the powers and duties enumerated in the specific laws involved.
24 However, the carrying out of those powers and duties shall be
25 subject to the direction and supervision of the secretary, who

. 148494. 1

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1 shall retain the final decision-making authority and
2 responsibility for the administration of any such laws.

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

6 Section 9. [NEW MATERIAL] DIVISION DIRECTORS. -- Except as
7 otherwise provided by law, the secretary shall appoint, with
8 the approval of the governor, "directors" of divisions
9 established within the department. The directors so appointed
10 are exempt from the Personnel Act.

11 Section 10. [NEW MATERIAL] BUREAU CHIEFS. -- The secretary
12 may establish within each division such "bureaus" as the
13 secretary deems necessary to carry out the provisions of the
14 Indian Affairs Department Act. The secretary shall appoint a
15 "chief" to be the administrative head of a bureau. A chief and
16 all subsidiary employees of the department are covered by the
17 Personnel Act unless otherwise provided by law.

18 Section 11. [NEW MATERIAL] ADMINISTRATIVE SERVICES
19 DIVISION--DUTIES. -- The administrative services division shall
20 provide administrative services to the department, including:
21 A. keeping all official records of the department;
22 B. providing clerical services in the areas of
23 personnel and budget preparation; and
24 C. providing clerical, record-keeping and
25 administrative support to agencies administratively attached to

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1 the department, at their request.

2 Section 12. [NEW MATERIAL] PROGRAM SERVICES DIVISION--
3 DUTIES.--The program services division shall provide program
4 implementation and support for field programs and services.

5 Section 13. [NEW MATERIAL] INDIAN AFFAIRS ADVISORY BOARD
6 CREATED.--

7 A. The "Indian affairs advisory board" is created.
8 The board shall consist of ten members who are residents of New
9 Mexico appointed by the governor as follows:

- 10 (1) three members shall be Pueblo Indians;
- 11 (2) three members shall be Navajo Indians;
- 12 (3) two members shall be Apache Indians;
- 13 (4) one member shall be an urban Indian; and
- 14 (5) one member shall be a non-Indian.

15 B. Indian members, except the urban Indian member,
16 shall be appointed from lists of names submitted by the all
17 Indian pueblo council, the Jicarilla and Mescalero tribal
18 councils and the Navajo Nation.

19 C. Members serve at the pleasure of the governor.
20 Vacancies shall be filled by appointment by the governor for
21 the unexpired term.

22 D. The governor shall appoint the chairman and the
23 board may select such other officers as the board deems
24 necessary.

25 E. Members may receive per diem and mileage

1 pursuant to the Per Diem and Mileage Act, but shall receive no
2 other compensation, perquisite or allowance.

3 F. The board shall advise the secretary on policy
4 matters related to the department's powers and duties.

5 Section 14. [NEW MATERIAL] PRESERVATION OF INDIAN
6 LEGENDS. --The department may employ not more than two persons
7 for each Indian tribe or pueblo in the state to record the
8 legends of the tribe or pueblo in the English language for the
9 purpose of making them available for dissemination to the
10 public. Persons employed to record the legends shall be
11 members of the tribe or pueblo, shall have knowledge of both
12 English and the language spoken by the particular tribe or
13 pueblo and shall be familiar with a means of recording the
14 legends in the English language. The department may employ
15 personnel and purchase recording equipment necessary to fulfill
16 the purpose of this section.

17 Section 15. Section 9-8-8 NMSA 1978 (being Laws 1977,
18 Chapter 252, Section 9, as amended) is amended to read:

19 "9-8-8. ADMINISTRATIVELY ATTACHED AGENCIES. --The [~~office~~
20 ~~of Indian affairs, the~~] commission on the status of women [~~and~~
21 ~~the state agency on aging are~~] is administratively attached to
22 the human services department in accordance with the Executive
23 Reorganization Act. "

24 Section 16. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,
25 PERSONNEL, PROPERTY, CONTRACTS AND REFERENCES IN LAW. --The

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1 transfer of functions, personnel, appropriations, money,
2 records, equipment, supplies, other property, contractual
3 obligations and statutory references of the New Mexico office
4 of Indian affairs to the Indian affairs department pursuant to
5 executive order issued in accordance with Laws 2003, Chapter
6 403 is approved.

7 Section 17. APPROPRIATION. --Five hundred twenty-seven
8 thousand dollars (\$527,000) is appropriated from the general
9 fund to the Indian affairs department for expenditure in fiscal
10 year 2005 for organizational and operational expenses. Any
11 unexpended or unencumbered balance remaining at the end of
12 fiscal year 2005 shall revert to the general fund.

13 Section 18. REPEAL. --Sections 28-12-4 through 28-12-9
14 NMSA 1978 (being Laws 1975 (1st S.S.), Chapter 11, Section 1,
15 Laws 1955, Chapter 162, Sections 2 through 4, Laws 1967,
16 Chapter 225, Section 1 and Laws 1955, Chapter 162, Section 5,
17 as amended) are repealed.