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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.

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

Section 1. SHORT TITLE.--Sections 1 through 15 of this act may be cited as the "Indian Affairs Department Act".

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

Section 3. DEFINITIONS.--As used in the Indian Affairs Department Act:

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

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

Section 4. DEPARTMENT CREATED.--The "Indian affairs department" is created in the executive branch. The department is a cabinet department and includes the following divisions:

1 A. the administrative services division; and

2 B. the program services division.

3 Section 5. SECRETARY OF INDIAN AFFAIRS.--

4 A. The chief executive and administrative officer
5 of the department is the "secretary of Indian affairs". The
6 secretary shall be appointed by the governor with the consent
7 of the senate. The secretary shall hold the office at the
8 pleasure of the governor and shall serve in the executive
9 cabinet.

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

14 Section 6. SECRETARY--DUTIES AND GENERAL POWERS.--

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

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

1 shall:

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

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

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

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

17 (5) take administrative action by issuing
18 orders and instructions, not inconsistent with the law, to
19 ensure implementation of and compliance with the provisions
20 of law with the administration or execution of which the
21 secretary is responsible, and to enforce those orders and
22 instructions by appropriate administrative action or actions
23 in the courts;

24 (6) conduct research and studies that will
25 improve the operations of the department and the provision of

1 services to the citizens of the state;

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

7 (8) prepare an annual budget of the
8 department;

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

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

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

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

19 (10) appoint, with the governor's consent,
20 for each division, a "director". These appointed positions
21 are exempt from the provisions of the Personnel Act. Persons
22 appointed to these positions shall serve at the pleasure of
23 the secretary.

24 C. The secretary may apply for and receive, with
25 the governor's approval, in the name of the department, any

1 public or private funds, including United States government
2 funds, available to the department to carry out its programs,
3 duties or services.

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

9 E. The secretary may make and adopt such
10 reasonable procedural rules as may be necessary to carry out
11 the duties of the department and its divisions. A rule
12 promulgated by the director of a division in carrying out the
13 functions and duties of the division shall not be effective
14 until approved by the secretary. Unless otherwise provided
15 by statute, a rule affecting a person or agency outside the
16 department shall not be adopted, amended or repealed without
17 a public hearing on the proposed action before the secretary
18 or a hearing officer designated by the secretary. The public
19 hearing shall be held in Santa Fe unless otherwise permitted
20 by statute. Notice of the subject matter of the rule, the
21 action proposed to be taken, the time and place of the
22 hearing, the manner in which interested persons may present
23 their views and the method by which copies of the proposed
24 rule, proposed amendment or repeal of an existing rule may be
25 obtained shall be published once at least thirty days prior

1 to the hearing date in a newspaper of general circulation and
2 mailed at least thirty days prior to the hearing date to all
3 persons who have made a written request for advance notice of
4 hearing. All rules shall be filed in accordance with the
5 State Rules Act.

6 Section 7. DEPARTMENT--ADDITIONAL POWERS AND DUTIES.--

7 A. The department is the coordinating agency for
8 intergovernmental and interagency programs concerning tribal
9 governments and the state.

10 B. The department shall:

11 (1) investigate, study, consider and act
12 upon the entire subject of Indian conditions and relations
13 within New Mexico, including problems of health, economy and
14 education and the effect of local, state and federal
15 legislative, executive and judicial actions. The department
16 shall collaborate with other state departments or agencies
17 that have an interest or stake in the subject being
18 investigated, studied or considered. In performing its
19 functions, the department shall provide an opportunity for
20 the presentation and exchange of ideas in respect to Indian
21 affairs of the state by all interested persons; and

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

25 C. The department may:

1 (1) hold hearings, conduct meetings, make
2 investigations and confer with officials of local, state and
3 federal agencies to secure cooperation between the local,
4 state, federal and Indian tribal governments in the promotion
5 of the welfare of the Indian people of New Mexico;

6 (2) contract with tribal governments, public
7 agencies or private persons to provide services and
8 facilities for promoting the welfare of the Indian people of
9 New Mexico; and

10 (3) solicit and accept gifts, grants,
11 donations, bequests and devises.

12 Section 8. ORGANIZATIONAL UNITS OF THE DEPARTMENT--
13 POWERS AND DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--

14 A. Those organizational units of the department
15 and the officers of those units specified by law shall have
16 all of the powers and duties enumerated in the specific laws
17 involved. However, the carrying out of those powers and
18 duties shall be subject to the direction and supervision of
19 the secretary, who shall retain the final decision-making
20 authority and responsibility for the administration of any
21 such laws.

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

25 Section 9. DIVISION DIRECTORS.--Except as otherwise

1 provided by law, the secretary shall appoint, with the
2 approval of the governor, "directors" of divisions
3 established within the department. The directors so
4 appointed are exempt from the Personnel Act.

5 Section 10. BUREAU CHIEFS.--The secretary may establish
6 within each division such "bureaus" as the secretary deems
7 necessary to carry out the provisions of the Indian Affairs
8 Department Act. The secretary shall appoint a "chief" to be
9 the administrative head of a bureau. A chief and all
10 subsidiary employees of the department are covered by the
11 Personnel Act unless otherwise provided by law.

12 Section 11. ADMINISTRATIVE SERVICES DIVISION--DUTIES.--
13 The administrative services division shall provide
14 administrative services to the department, including:

- 15 A. keeping all official records of the department;
- 16 B. providing clerical services in the areas of
17 personnel and budget preparation; and
- 18 C. providing clerical, record-keeping and
19 administrative support to agencies administratively attached
20 to the department, at their request.

21 Section 12. PROGRAM SERVICES DIVISION--DUTIES.--The
22 program services division shall provide program
23 implementation and support for field programs and services.

24 Section 13. INDIAN AFFAIRS COMMISSION CREATED.--

- 25 A. The "Indian affairs commission" is created.

1 The commission shall consist of ten members who are residents
2 of New Mexico appointed by the governor as follows:

- 3 (1) three members shall be Pueblo Indians;
- 4 (2) three members shall be Navajo Indians;
- 5 (3) two members shall be Apache Indians;
- 6 (4) one member shall be an urban Indian; and
- 7 (5) one member shall be a non-Indian.

8 B. Indian members, except the urban Indian member,
9 shall be appointed from lists of names submitted by the all
10 Indian pueblo council, the Jicarilla and Mescalero tribal
11 councils and the Navajo Nation.

12 C. Members serve at the pleasure of the governor.
13 Vacancies shall be filled by appointment by the governor for
14 the unexpired term.

15 D. The governor shall appoint the chairman and the
16 commission may select such other officers as the commission
17 deems necessary.

18 E. Members may receive per diem and mileage
19 pursuant to the Per Diem and Mileage Act, but shall receive
20 no other compensation, perquisite or allowance.

21 Section 14. POWERS OF THE COMMISSION.--The commission
22 shall:

23 A. conduct meetings to provide an opportunity for
24 the presentation and exchange of ideas with respect to Indian
25 affairs by any interested party that result in the promotion

1 of the welfare of the Indian people;

2 B. receive and disseminate information on issues
3 that significantly impact the welfare of the Indian people;

4 C. apprise the secretary of the conditions in
5 Native American communities in New Mexico; and

6 D. advise the secretary on policy matters related
7 to the department's powers and duties.

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

20 Section 16. Section 9-8-8 NMSA 1978 (being Laws 1977,
21 Chapter 252, Section 9, as amended) is amended to read:

22 "9-8-8. ADMINISTRATIVELY ATTACHED AGENCIES.--The
23 commission on the status of women is administratively
24 attached to the human services department in accordance with
25 the Executive Reorganization Act."

1 Section 17. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,
2 PERSONNEL, PROPERTY, CONTRACTS AND REFERENCES IN LAW.--The
3 transfer of functions, personnel, appropriations, money,
4 records, equipment, supplies, other property, contractual
5 obligations and statutory references of the New Mexico office
6 of Indian affairs to the Indian affairs department pursuant
7 to executive order issued in accordance with Laws 2003,
8 Chapter 403 is approved.

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

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