

AN ACT

RELATING TO GOVERNMENT ORGANIZATION; CREATING THE WORKFORCE SOLUTIONS DEPARTMENT; PROVIDING POWERS AND DUTIES; PROVIDING FOR TRANSFERS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. SHORT TITLE.--Sections 1 through 14 of this act may be cited as the "Workforce Solutions Department Act".

Section 2. PURPOSE.--The purpose of the Workforce Solutions Department Act is to establish a single, unified department to administer all laws and exercise all functions formerly administered and exercised by the labor department and the office of workforce development.

Section 3. DEFINITIONS.--As used in the Workforce Solutions Department Act:

A. "department" means the workforce solutions department; and

B. "secretary" means the secretary of workforce solutions.

Section 4. WORKFORCE SOLUTIONS DEPARTMENT CREATED.--The "workforce solutions department" is created in the executive branch pursuant to the Executive Reorganization Act. The department is a cabinet department that includes:

A. the office of the secretary;

- B. the administrative services division;
- C. the business services division;
- D. the labor relations division;
- E. the workforce technology division; and
- F. the workforce transition services division.

Section 5. SECRETARY OF WORKFORCE SOLUTIONS--
APPOINTMENT.--

A. The chief executive and administrative officer of the department is the "secretary of workforce solutions". 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 the appointment.

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

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 the human rights commission is explicitly granted by Section 28-1-4 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 Workforce Solutions Department Act, 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) 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 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; and

(10) within budgetary limits, appoint such staff as required to carry out the duties of the secretary or the department.

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 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 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 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. All rules shall be filed in accordance with the State Rules Act.

Section 7. ADMINISTRATIVELY ATTACHED AGENCIES.--The following are administratively attached to the department:

- A. the human rights commission;
- B. the labor and industrial commission; and
- C. the state workforce development board.

Section 8. DIVISION DIRECTORS.--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.

Section 9. BUREAU--CHIEFS.--The secretary shall establish within each division such bureaus as the secretary deems necessary to carry out the provisions of the Workforce Solutions Department Act. The secretary shall employ a chief

to be administrative head of each bureau.

Section 10. PERSONNEL ACT COVERAGE.--All employees and positions in the department, except for the positions of secretary and division directors and other positions expressly permitted to be exempt by the Personnel Act, shall be covered by and shall be subject to the provisions of the Personnel Act. The secretary is the appointing authority.

Section 11. COOPERATION WITH 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 organizational 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.

Section 12. 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.

Section 13. 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 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 6 of the Workforce Solutions 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.

Section 14. DISCLOSURE OF INFORMATION.--To the extent permitted by federal law, upon the written request of a corporation organized pursuant to the Educational Assistance Act, 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.

Section 15. Section 13-4D-1 NMSA 1978 (being Laws 1992, Chapter 74, Section 1) is amended to read:

"13-4D-1. SHORT TITLE.--Chapter 13, Article 4D NMSA 1978 may be cited as the "Public Works Apprentice and Training Act"."

Section 16. Section 13-4D-3 NMSA 1978 (being Laws 1992, Chapter 74, Section 3) is amended to read:

"13-4D-3. DEFINITIONS.--As used in the Public Works
Apprentice and Training Act:

A. "approved apprentice and training programs"
means building trades apprenticeship and training programs in
New Mexico that are recognized by the bureau of apprenticeship
and training of the United States department of labor or the
New Mexico apprenticeship council;

B. "compliance statement" means a monthly record
of an employer's contributions paid into an approved
apprentice and training program in New Mexico or into the
public works apprentice and training fund;

C. "director" or "division" means the labor
relations division of the workforce solutions department; and

D. "employer" means a contractor, subcontractor or
any person acting as a contractor on a public works project,
as that term is defined in the provisions of the Construction
Industries Licensing Act."

Section 17. Section 28-1-2 NMSA 1978 (being Laws 1969,
Chapter 196, Section 2, as amended) is amended to read:

"28-1-2. DEFINITIONS.--As used in the Human Rights Act:

A. "person" means one or more individuals, a
partnership, association, organization, corporation, joint
venture, legal representative, trustees, receivers or the
state and all of its political subdivisions;

B. "employer" means any person employing four or

more persons and any person acting for an employer;

C. "commission" means the human rights commission;

D. "director" or "bureau" means the human rights bureau of the labor relations division of the workforce solutions department;

E. "employee" means any person in the employ of an employer or an applicant for employment;

F. "labor organization" means any organization that exists for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employment;

G. "employment agency" means any person regularly undertaking with or without compensation to procure opportunities to work or to procure, recruit or refer employees;

H. "public accommodation" means any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a bona fide private club or other place or establishment that is by its nature and use distinctly private;

I. "housing accommodation" means any building or portion of a building that is constructed or to be constructed, which is used or intended for use as the residence or sleeping place of any individual;

J. "real property" means lands, leaseholds or commercial or industrial buildings, whether constructed or to be constructed, offered for sale or rent, and any land rented or leased for the use, parking or storage of house trailers;

K. "secretary" means the secretary of workforce solutions;

L. "unlawful discriminatory practices" means those unlawful practices and acts specified in Section 28-1-7 NMSA 1978;

M. "physical or mental handicap" means a physical or mental impairment that substantially limits one or more of a person's major life activities. A person is also considered to be physically or mentally handicapped if the person has a record of a physical or mental handicap or is regarded as having a physical or mental handicap;

N. "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

O. "applicant for employment" means a person applying for a position as an employee;

P. "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived; and

Q. "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the

person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth."

Section 18. Section 50-14-2 NMSA 1978 (being Laws 1999, Chapter 260, Section 2, as amended) is amended to read:

"50-14-2. DEFINITIONS.--As used in the Workforce Development Act:

A. "board" means the state workforce development board;

B. "chief elected official" means the chief elected executive officer of a unit of general local government in a local area and in a case in which a local area includes more than one unit of general local government, "chief elected official" means the person designated under the agreement described in Section 117 (c)(1)(B) of the federal Workforce Investment Act of 1998;

C. "employment training program" means a program or a part of a program, regardless of which state or local agency administers it, that has as its primary purpose assisting persons in obtaining or enhancing employment;

D. "local board" means a local workforce development board; and

E. "office" or "division" means the workforce transition services division of the workforce solutions department."

Section 19. Section 50-14-9 NMSA 1978 (being Laws 2005, Chapter 111, Section 10) is amended to read:

"50-14-9. WORKFORCE TRANSITION SERVICES DIVISION.--

A. The "workforce transition services division" is created in the workforce solutions department.

B. The division shall be the recipient of all grants from the United States pursuant to the federal Workforce Investment Act of 1998 and shall disburse those grants consistent with that act and the Workforce Development Act.

C. The division shall administer the provisions of the Workforce Development Act and is the governor's designee for the state with authority to administer New Mexico's program pursuant to the federal Workforce Investment Act of 1998. In performance of that duty and the duties set forth in Section 50-14-10 NMSA 1978, the division has the general power to:

(1) sue and, subject to the provisions of the Tort Claims Act, be sued;

(2) enter into contracts, joint powers agreements and other contracts for workforce development services and administer related programs with other state agencies; local governments; state institutions of higher learning; Indian nations, tribes or pueblos; regional provider networks; and corporations authorized to do business in the

state;

(3) 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 the division is responsible and to enforce those orders and instructions by appropriate administrative actions or actions in courts;

(4) promulgate, following the procedure in Subsection E of Section 9-1-5 NMSA 1978, reasonable rules necessary to carry out the duties of the division; and

(5) take all other actions necessary to meet the purposes of the Workforce Development Act."

Section 20. Section 50-14-10 NMSA 1978 (being Laws 2005, Chapter 111, Section 11) is amended to read:

"50-14-10. DIVISION--DUTIES.--The division shall:

A. provide technical, administrative and fiscal agent support to the board;

B. develop a unified, comprehensive plan for streamlining and integrating employment training programs, including the consolidation of all employment training programs, into the division. The division shall report annually to the governor and the legislature generally the progress and effectiveness of the workforce development system no later than September 1;

C. develop a performance-based system of

accountability for employment training programs, including the board, local boards, one-stop centers and training providers, which system shall include key performance benchmarks to be used to monitor and assess performance;

D. monitor compliance with performance-based and coordination standards, including such standards as the division establishes by rule, with approval of the board, or that the board has adopted in the state plan, for the state's employment training programs regardless of funding source or the administrative agency that receives the funds. In performing this duty, the division:

(1) may issue subpoenas to appear and answer questions or produce documents;

(2) may investigate substantial allegations of improper financial or program activities;

(3) shall submit compliance reports to the governor; and

(4) shall, with approval of the governor, issue such corrective action orders as are necessary to enforce compliance, including orders that suspend funding for employment training programs or that transfer the programs to another agency;

E. promote the active participation and partnership with community colleges wherever possible throughout the state, which shall include the use of community

colleges in creating career pathways and the use of available partnership incentives with local boards to use community college facilities for one-stop locations, co-location opportunities and specifically designed training programs; and

F. provide oversight and technical support for local boards to assist them in achieving independence and meeting performance standards while implementing statewide goals and directions."

Section 21. Section 50-15-2 NMSA 1978 (being Laws 2005, Chapter 257, Section 2) is amended to read:

"50-15-2. DEFINITIONS.--As used in the Day Laborer Act:

A. "check cashing service" means a business that for a fee offers to cash checks or other payment instruments or that advertises that it cashes checks or other payment instruments;

B. "day labor" means employment that is under a contract between a day labor service agency and a third-party employer, that is occasional or irregular and that is for a limited time period;

C. "day labor service agency" means an entity, including a labor broker or labor pool, that provides day laborers to third-party employers and that charges the third-party employer for the service of providing day laborers for employment offered by the employer;

D. "day laborer" means a person who contracts for

day labor employment with a day labor service agency;

E. "department" means the workforce solutions department;

F. "office worker" means a person employed to perform clerical, secretarial or other semiskilled or skilled work that is predominantly performed in an office setting;

G. "payment instrument" means a paycheck, payment voucher or other negotiable instrument from an employer provided to an employee to pay for hours worked; and

H. "third-party employer" means a person that contracts with a day labor service agency for the employment of day laborers."

Section 22. Section 51-1-2 NMSA 1978 (being Laws 1979, Chapter 280, Section 11, as amended) is amended to read:

"51-1-2. DEFINITIONS.--As used in the Unemployment Compensation Law:

A. "department" means the workforce solutions department;

B. "division" means the workforce transition services division of the department, the director of the division or an employee of the division exercising authority lawfully delegated to the employee by the director; and

C. "secretary" means the secretary of workforce solutions or an employee of the department exercising authority lawfully delegated to the employee by the

secretary."

Section 23. TEMPORARY PROVISIONS--TRANSFERS.--

A. On July 1, 2007, all functions, personnel, appropriations, money, buildings, files, records, furniture, equipment and other property of the labor department, including any divisions of the department, are transferred to the workforce solutions department.

B. On July 1, 2007, all functions, personnel, appropriations, money, files, records, furniture, equipment and other property of the office of workforce training and development are transferred to the workforce solutions department.

C. On July 1, 2007, all contractual obligations of the labor department, including any divisions of the department, are transferred to the workforce solutions department.

D. On July 1, 2007, all contractual obligations of the office of workforce training and development are transferred to the workforce solutions department.

E. On July 1, 2007, all statutory references to the labor department or any divisions of the labor department shall be deemed to be references to the workforce solutions department.

F. On July 1, 2007, all statutory references to the office of workforce training and development shall be

deemed to be references to the workforce solutions department.

Section 24. REPEAL.--Sections 9-18-1 through 9-18-15, 50-1-1.5, 50-1-9, 50-6-15 and 50-14-16 NMSA 1978 (being Laws 1987, Chapter 342, Sections 1 through 14, Laws 1993, Chapter 16, Section 2, Laws 1979, Chapter 204, Section 8, Laws 1987, Chapter 333, Section 2, Laws 1963, Chapter 175, Section 4 and Laws 2005, Chapter 111, Section 25, as amended) are repealed.

Section 25. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2007. _____