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HOUSE BILL 729

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Luciano "Lucky" Varela

FOR THE INFORMATION TECHNOLOGY AND  
TELECOMMUNICATIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO INFORMATION TECHNOLOGY; DELETING REFERENCE TO THE  
NON-EXISTENT INFORMATION SYSTEMS COUNCIL; AMENDING THE DUTIES  
OF THE SECRETARY OF INFORMATION TECHNOLOGY; REQUIRING  
COMPLIANCE WITH FEDERAL GUIDELINES FOR RATE-SETTING; REVISING  
THE MEMBERSHIP OF THE INFORMATION TECHNOLOGY COMMISSION;  
PROHIBITING LOBBYISTS FROM SERVING ON THE INFORMATION  
TECHNOLOGY COMMISSION; ADDING AN INFORMATION TECHNOLOGY  
COMMISSION MEMBER TO THE PROJECT CERTIFICATION PROCESS;  
PROVIDING FOR PAYMENT BY AGENCIES TO THE DEPARTMENT OF  
INFORMATION TECHNOLOGY; CHANGING THE DUE DATE FOR THE EQUIPMENT  
REPLACEMENT PLANS; CLARIFYING TELECOMMUNICATIONS DUTIES OF THE  
DEPARTMENT OF INFORMATION TECHNOLOGY; RECOMPILING SECTIONS  
RELATING TO THE COMMUNICATIONS DIVISION AND THE  
TELECOMMUNICATIONS BUREAU AS PART OF THE DEPARTMENT OF  
INFORMATION TECHNOLOGY ACT.

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

Section 1. Section 9-17-6 NMSA 1978 (being Laws 1983, Chapter 301, Section 6, as amended) is amended to read:

"9-17-6. GENERAL SERVICES DEPARTMENT--ADMINISTRATIVELY ATTACHED [~~AGENCIES~~] AGENCY.--[~~A.~~] The personnel board and office are administratively attached to the general services department, as provided in Section 10-9-11 NMSA 1978.

~~[B. The information systems council is administratively attached to the general services department as provided in Section 15-1-5 NMSA 1978.]"~~

Section 2. Section 9-27-6 NMSA 1978 (being Laws 2007, Chapter 290, Section 6) is amended to read:

"9-27-6. SECRETARY--DUTIES AND GENERAL POWERS.--

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 any division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary

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1 shall:

2 (1) exercise general supervisory and  
3 appointing authority over all department employees, subject to  
4 any applicable personnel laws and regulations;

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

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

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

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

22 (6) conduct research and studies that will  
23 improve the operations of the department and the provision of  
24 services to [~~executive~~] state agencies and the residents of the  
25 state;

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

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

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

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

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

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

18 (10) appoint for each division a "director".  
19 These appointed positions are exempt from the provisions of the  
20 Personnel Act. Persons appointed to these positions shall  
21 serve at the pleasure of the secretary.

22 C. As the chief information officer, the secretary  
23 shall:

24 (1) review executive agency plans regarding  
25 prudent allocation of information technology resources;

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1 reduction of duplicate or redundant data, hardware and software  
2 [~~redundancy~~]; and improvement of system interoperability and  
3 data accessibility among agencies;

4 (2) approve executive agency information  
5 technology requests for proposals and [~~contract vendor~~] other  
6 requests that are subject to the Procurement Code, prior to  
7 final approval;

8 (3) promulgate rules for oversight of  
9 information technology procurement;

10 (4) approve executive agency information  
11 technology contracts and amendments to those contracts,  
12 including emergency procurements, sole source contracts and  
13 price agreements, prior to approval by the department of  
14 finance and administration; provided, however, that this does  
15 not apply to maintenance contracts or agreements that were in  
16 place or approved before July 1, 2009;

17 (5) develop and implement procedures to  
18 standardize data elements, determine data ownership and ensure  
19 data sharing among executive agencies;

20 (6) verify compliance with state information  
21 architecture and the state information technology strategic  
22 plan before approving documents referred to in Paragraphs (2)  
23 and (4) of this subsection;

24 (7) monitor executive agency compliance with  
25 its agency plan, the state information technology strategic

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1 plan and state information architecture and report to the  
2 governor, executive agency management and the legislative  
3 finance committee on noncompliance;

4 (8) develop information technology cost  
5 recovery mechanisms and information systems rate and fee  
6 structures of [~~executive~~] state agencies and other public or  
7 private sector providers and make recommendations to the  
8 information technology rate committee;

9 (9) provide technical support to executive  
10 agencies in the development of their agency plans;

11 (10) ensure the use of existing public or  
12 private information technology or telecommunications resources  
13 when the use is practical, efficient, effective and financially  
14 prudent and is in compliance with the Procurement Code;

15 (11) review appropriation requests related to  
16 executive agency information technology requests to ensure  
17 compliance with agency plans and the state information  
18 technology strategic plan and make written recommendations by  
19 November 14 of each year to the department of finance and  
20 administration and by November 21 of each year to the  
21 legislative finance committee, the appropriate interim  
22 legislative committee and the information technology  
23 commission; provided, however, that the recommendations to the  
24 legislative committees and the commission have been agreed to  
25 by the departments;

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1 (12) [~~establish~~] promulgate rules to ensure  
2 that information technology projects satisfy criteria  
3 established by the secretary and are phased in with funding  
4 released in phases contingent upon successful completion of the  
5 prior phase;

6 (13) provide oversight of information  
7 technology projects, including ensuring adequate risk  
8 management, disaster recovery and business continuity practices  
9 and monitoring compliance with strategies recommended by the  
10 information technology commission for information technology  
11 projects that [~~impact~~] affect multiple agencies; [~~and~~]

12 (14) conduct reviews of information technology  
13 projects and provide written reports to the information  
14 technology commission and appropriate legislative oversight  
15 bodies;

16 (15) conduct background checks on department  
17 employees and prospective department employees that have or  
18 will have administrative access or authority to sensitive,  
19 confidential or private information or the ability to alter  
20 systems, networks or other information technology hardware or  
21 software;

22 (16) report to the information technology  
23 commission projects that have been certified and are in  
24 compliance with contingencies; and

25 [~~(14)~~] (17) perform any other information

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1 technology function assigned by the governor.

2 D. Each executive agency shall submit an agency  
3 information technology plan to the secretary in the form and  
4 detail required by the secretary. Each executive agency shall  
5 conduct background checks on agency or prospective agency  
6 employees that have or will have administrative access or  
7 authority to alter systems, networks or other information  
8 technology hardware or software.

9 E. A state agency that receives an invoice from the  
10 department for services rendered to the agency shall have  
11 thirty days from receipt of the invoice to pay the department  
12 or to notify the department if the amount of the invoice is in  
13 dispute. The agency shall have fifteen days from its  
14 notification of dispute to the department to present its  
15 reasons in writing and request an adjustment. The department  
16 shall have fifteen days from its receipt of the reasons for  
17 dispute to notify the agency of its decision. If the  
18 department and the agency do not agree on a resolution, the  
19 secretary of finance and administration shall make a  
20 determination on the amount owed by the agency to the  
21 department. If the agency has not paid the department or  
22 notified the department of a dispute within thirty days of  
23 receipt of the invoice, the department shall notify the  
24 department of finance and administration and request that the  
25 department of finance and administration transfer funds from

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1 the agency to the department of information technology to  
2 satisfy the agency's obligation.

3 ~~[E.]~~ F. The secretary, as chief information  
4 officer, shall prepare a state information technology strategic  
5 plan for the executive branch and update it at least once every  
6 three years, which plan shall be available to agencies by July  
7 31 of each year. The plan shall comply with the provisions of  
8 the Department of Information Technology Act and provide for  
9 the:

10 (1) interchange of information related to  
11 information technology among executive agencies;

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

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

18 ~~[F.]~~ G. The secretary may apply for and receive,  
19 with the governor's approval, in the name of the department,  
20 any public or private funds, including United States government  
21 funds, available to the department to carry out its programs,  
22 duties or services.

23 ~~[G.]~~ H. Where information technology functions of  
24 executive agencies overlap or a function assigned to one agency  
25 could better be performed by another agency, the secretary may

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1 recommend appropriate legislation to the next session of the  
2 legislature for its approval.

3 ~~[H.]~~ I. The secretary may make and adopt such  
4 reasonable procedural rules as may be necessary to carry out  
5 the duties of the department and its divisions and requirements  
6 and standards for the executive branch's information technology  
7 needs, functions, systems and resources, including:

8 (1) information technology security;

9 (2) approval for procurement of information  
10 technology that exceeds an amount set by rule;

11 (3) detail and format for the agency  
12 information technology plan;

13 (4) acquisition, licensing and sale of  
14 information technology; and

15 (5) requirements for agency information  
16 technology projects and related plan, analysis, oversight,  
17 assessment and specifications.

18 ~~[F.]~~ J. Unless otherwise provided by statute, no  
19 rule affecting any person or agency outside the department  
20 shall be adopted, amended or repealed without a public hearing  
21 on the proposed action before the secretary or a hearing  
22 officer designated by the secretary. The public hearing shall  
23 be held in Santa Fe unless otherwise permitted by statute.

24 Notice of the subject matter of the rule, the action proposed  
25 to be taken, the time and place of the hearing, the manner in

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1 which interested persons may present their views and the method  
2 by which copies of the proposed rule, proposed amendment or  
3 repeal of an existing rule may be obtained shall be published  
4 once at least thirty days prior to the hearing date in a  
5 newspaper of general circulation and mailed at least thirty  
6 days prior to the hearing date to all persons who have made a  
7 written request for an advance notice of hearing. Rules shall  
8 be filed in accordance with the State Rules Act."

9 Section 3. Section 9-27-7 NMSA 1978 (being Laws 2007,  
10 Chapter 290, Section 7) is amended to read:

11 "9-27-7. INFORMATION TECHNOLOGY RATE COMMITTEE--  
12 MEMBERSHIP--DUTIES.--

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

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

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

20 (3) the secretary of information technology.

21 B. The information technology rate committee shall:

22 (1) review the rate and fee schedule proposed  
23 by the secretary;

24 (2) ensure that the rate and fee schedule  
25 complies with the federal office of management and budget

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1 circular A-87 or its successor directive;

2 [~~(2)~~] (3) propose an equitable rate and fee  
3 schedule based on cost recovery for [~~executive~~] state agencies  
4 that use information technology services and pay rates to an  
5 internal service fund, with priority service to public safety  
6 agencies;

7 [~~(3)~~] (4) present the committee's proposed  
8 rate and fee schedule by June 1 of each year to the office of  
9 the governor, the department of finance and administration and  
10 the legislative finance committee; and

11 [~~(4)~~] (5) by July 15 of each year, implement a  
12 rate and fee schedule based on the committee's recommendations  
13 [~~and input from the office of the governor, the department of~~  
14 ~~finance and administration and the legislative finance~~  
15 ~~committee~~]; provided, however, that a reduction in rates or  
16 fees by the department 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 4. Section 9-27-9 NMSA 1978 (being Laws 2007,  
20 Chapter 290, Section 9) is amended to read:

21 "9-27-9. INFORMATION TECHNOLOGY COMMISSION--CREATION--  
22 POWERS AND DUTIES.--

23 A. The "information technology commission" is  
24 created. The commission consists of [~~seventeen~~] nineteen  
25 voting members as follows:

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1 (1) five members appointed by the governor,  
2 three of whom are from agencies whose primary funding is not  
3 from internal service funds;

4 (2) one member from the house of  
5 representatives appointed by the speaker of the house of  
6 representatives;

7 (3) one member from the senate appointed by  
8 the senate committees' committee, or if the appointments are  
9 made in the interim, by the president pro tempore after  
10 consultation with and agreement of a majority of the members of  
11 the committees' committee;

12 [~~2~~] (4) one staff member with  
13 telecommunications regulatory experience appointed by the chair  
14 of the public regulation commission;

15 [~~3~~] (5) two members representing education,  
16 one appointed by the secretary of higher education and one  
17 appointed by the secretary of public education;

18 [~~4~~] (6) two members appointed by the  
19 governor to represent local government, one appointment to be  
20 selected by the governor from a list of three names provided by  
21 the New Mexico association of counties and one appointment to  
22 be selected by the governor from a list of three names provided  
23 by the New Mexico municipal league;

24 [~~5~~] (7) two members appointed by the  
25 governor to represent local telecommunications service

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1 providers;

2                   ~~[(6)]~~ (8) two members from the national  
3 laboratories appointed by the respective laboratory director;  
4 and

5                   ~~[(7)]~~ (9) three members, one from each  
6 congressional district, appointed by the governor to represent  
7 the public, ~~[with]~~ who have information technology and  
8 management experience, but who are not employees of the state  
9 or a political subdivision of the state and who do not have any  
10 financial interest in the state information systems or state  
11 contracts. The public members shall serve for staggered three-  
12 year terms.

13                   B. Additionally, the following nonvoting members  
14 may serve on the commission:

15                   (1) two members from the judicial information  
16 systems council appointed by the chair of that council;

17                   (2) one member representing the office of the  
18 attorney general appointed by the attorney general; and

19                   ~~[(3)] two members representing local~~  
20 ~~government, one appointed by the New Mexico association of~~  
21 ~~counties and one appointed by the New Mexico municipal league,~~  
22 ~~provided that the members are not from the same or adjacent~~  
23 ~~counties;~~

24                   ~~(4) one staff member from the legislative~~  
25 ~~council service and one staff member from the legislative~~

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1 ~~finance committee, appointed by their respective directors; and~~  
2 ~~(5)]~~ (3) the secretary as chief information  
3 officer.

4 C. Members of the commission, except the three  
5 public members appointed by the governor, may select designees  
6 to represent them and vote on their behalf.

7 D. A registered lobbyist under the Lobbyist  
8 Regulation Act shall not serve on the commission while  
9 registered as a lobbyist or for one year after terminating work  
10 as a lobbyist in compliance with the termination requirements  
11 of the Lobbyist Regulation Act.

12 E. The commission shall appoint a voting member to  
13 represent the commission on the department's committee or other  
14 body that certifies information technology projects.

15 ~~[D.]~~ F. The members of the commission who are not  
16 supported by public money, or their designees, may receive per  
17 diem and mileage pursuant to the Per Diem and Mileage Act, but  
18 shall receive no other compensation, perquisite or allowance.

19 ~~[E.]~~ G. The commission shall elect a chair and vice  
20 chair from the active voting membership of the commission for  
21 two-year terms.

22 ~~[F.]~~ H. The department shall provide staff to the  
23 commission.

24 ~~[G.]~~ I. The commission shall meet at least  
25 quarterly to review and approve:

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1 (1) the development and implementation of the  
2 state information technology strategic plan;

3 (2) critical information technology  
4 initiatives for the state;

5 (3) identification of information technology  
6 needs of state agencies;

7 (4) strategies for identifying information  
8 technology projects that [~~impact~~] affect multiple agencies;

9 (5) the state information architecture and the  
10 state information technology strategic plan for updates and  
11 compliance by executive agencies;

12 (6) proposed rules by the secretary; and

13 (7) guidelines for mediation of disputes  
14 between an executive agency and the secretary as chief  
15 information officer."

16 Section 5. Section 9-27-11 NMSA 1978 (being Laws 2008,  
17 Chapter 84, Section 2) is amended to read:

18 "9-27-11. EQUIPMENT REPLACEMENT PLANS--EQUIPMENT  
19 REPLACEMENT REVOLVING FUNDS.--

20 A. In order to plan for the expenditure of capital  
21 investments necessary to provide goods and services to the  
22 state and its agencies and to local public bodies and other  
23 enterprise customers, the department shall establish and  
24 maintain an equipment replacement plan for each of the  
25 department's enterprise functions. No later than [~~December 1~~]

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1 September 1 of each year, the plans shall be submitted to the  
2 department of finance and administration, the information  
3 technology commission and the legislature, accompanied by a  
4 reconciliation report of the preceding fiscal year reflecting  
5 financial activity in each of the equipment replacement  
6 revolving funds established pursuant to this section.

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

20 C. The department shall record amounts due to the  
21 equipment replacement revolving funds each fiscal year, based  
22 on the calculation of depreciation applicable to each  
23 enterprise service as reflected in the department's published  
24 cost structures for calculation of rates for services.

25 Transfers to the funds shall be made from the operating funds

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1 of each enterprise in amounts that reconcile with the recorded  
2 amounts due. The recording of amounts due to the equipment  
3 replacement revolving funds and the transfer of the funds shall  
4 be consistent with generally accepted accounting principles.

5 D. The department may make initial transfers from  
6 its operating funds to establish the beginning fund balances as  
7 of July 1, 2008."

8 Section 6. A new section of the Department of Information  
9 Technology Act is enacted to read:

10 "[NEW MATERIAL] HUMAN RESOURCES--ACCOUNTING AND MANAGEMENT  
11 REPORTING.--The department shall:

12 A. enter into a joint powers agreement for the  
13 joint design, development, acquisition and implementation of  
14 the statewide human resources, accounting and management  
15 reporting system or its successor system;

16 B. include a per employee assessment per agency  
17 that is sufficient to provide for the support, operation,  
18 maintenance, software upgrade or equipment replacement of the  
19 statewide human resources, accounting and management reporting  
20 system or its successor system; and

21 C. ensure that at least thirty percent of the funds  
22 collected pursuant to this section are deposited in a  
23 separately identifiable account for software upgrades and  
24 equipment replacement."

25 Section 7. Section 15-5-2 NMSA 1978 (being Laws 1978,  
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1 Chapter 124, Section 12, as amended) is recompiled in Chapter  
2 9, Article 27 NMSA 1978 and is amended to read:

3 "15-5-2. CENTRAL TELEPHONE SERVICES--STAFF--BUDGET.--The  
4 telecommunications bureau of the enterprise services division  
5 of the department shall provide the staff and material  
6 necessary to properly and adequately operate the central  
7 telephone system. The budget for the central telephone system  
8 shall be approved as part of the total operating budget of the  
9 [~~general services~~] department."

10 Section 8. Section 15-5-5 NMSA 1978 (being Laws 1963,  
11 Chapter 181, Section 5, as amended) is recompiled in Chapter 9,  
12 Article 27 NMSA 1978 and is amended to read:

13 "15-5-5. APPROPRIATION.--All income to the central  
14 telephone services fund is appropriated to carry out the  
15 purposes of Sections 15-5-1 through 15-5-6 NMSA 1978 or their  
16 successor recompiled sections. Payments from the central  
17 telephone services fund shall be made on vouchers signed by the  
18 secretary [~~of general services~~] or [~~his~~] the secretary's  
19 designee."

20 Section 9. Section 15-5-6 NMSA 1978 (being Laws 1963,  
21 Chapter 181, Section 6, as amended) is recompiled in Chapter 9,  
22 Article 27 NMSA 1978 and is amended to read:

23 "15-5-6. PARTICIPATION OR EXCLUSION OF AGENCY, DEPARTMENT  
24 OR INSTITUTION.--All departments, institutions and agencies of  
25 the state government to the extent that it is practical and

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1 feasible shall participate in the central telephone system. No  
2 agreement for any leased or purchased telephone service or for  
3 purchase of any telephone equipment shall be entered into by  
4 any department, institution or agency of the state  
5 participating in the central telephone system, except those  
6 institutions enumerated in Article 12, Section 11 of the [~~New~~  
7 ~~Mexico~~] constitution of New Mexico, except upon prior written  
8 approval of the secretary [~~of general services~~] or [~~the~~  
9 ~~director of the communications division, acting as his~~] the  
10 secretary's designee. If, on the basis of a technical survey,  
11 it is found to be infeasible or impractical to include  
12 particular agencies, departments or institutions in the central  
13 telephone system, the [~~director of the communications division~~]  
14 secretary or the secretary's designee may exclude them. In the  
15 event of exclusion of any agency, department or institution,  
16 the [~~director of the communications division~~] secretary or the  
17 secretary's designee shall file a written statement, certifying  
18 the reasons therefor, with the state records center."

19 Section 10. TEMPORARY PROVISION--RECOMPILATION

20 INSTRUCTIONS.--Sections 15-2-1 through 15-2-8 and 15-5-1,  
21 15-5-3 and 15-5-4 NMSA 1978 (being Laws 1977, Chapter 247,  
22 Sections 23 and 24, Laws 1997, Chapter 263, Section 1, Laws  
23 1970, Chapter 71, Section 1, Laws 1966, Chapter 32, Section 3,  
24 Laws 1971, Chapter 115, Section 2, Laws 1975, Chapter 214,  
25 Section 4 and Laws 1963, Chapter 181, Sections 1, 3 and 4, as

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1 amended) are recompiled as part of Chapter 9, Article 27 NMSA  
2 1978.

3 Section 11. REPEAL.--Section 15-5-7 NMSA 1978 (being Laws  
4 2007, Chapter 288, Section 1) is repealed.