

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.

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 AGENCY.-- The personnel board and office are administratively attached to the general services department, as provided in Section 10-9-11 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 shall:

(1) 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 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 for whose administration or execution the secretary is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to state agencies and the residents of the state;

(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; and

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

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

(1) review executive agency plans regarding prudent allocation of information technology resources; reduction of duplicate or redundant data, hardware and software; and improvement of system interoperability and data accessibility among agencies;

(2) approve executive agency information technology requests for proposals and other executive agency requests that are subject to the Procurement Code, prior to final approval;

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

(4) approve executive agency information technology contracts and amendments to those contracts, including emergency procurements, sole source contracts and

price agreements, prior to approval by the department of finance and administration;

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

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

(7) monitor executive agency compliance with its agency plan, the state information technology strategic plan and state information architecture and report to the governor, executive agency management and the legislative finance committee on noncompliance;

(8) develop information technology cost recovery mechanisms and information systems rate and fee structures of state agencies and other public or private sector providers and make recommendations to the information technology rate committee;

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

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

Code;

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

(12) promulgate rules to ensure that information technology projects satisfy criteria established by the secretary and are phased in with funding released in phases contingent upon successful completion of the prior phase;

(13) provide oversight of information technology projects, including ensuring adequate risk management, disaster recovery and business continuity practices and monitoring compliance with strategies recommended by the information technology commission for information technology projects that affect multiple agencies;

(14) conduct reviews of information

technology projects and provide written reports to the information technology commission and appropriate legislative oversight bodies;

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

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

(17) perform any other information technology function assigned by the governor.

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

E. A state agency that receives an invoice from the department for services rendered to the agency shall have thirty days from receipt of the invoice to pay the department or to notify the department if the amount of the invoice is in

dispute. The agency shall have fifteen days from its notification of dispute to the department to present its reasons in writing and request an adjustment. The department shall have fifteen days from its receipt of the reasons for dispute to notify the agency of its decision. If the department and the agency do not agree on a resolution, the secretary of finance and administration shall make a determination on the amount owed by the agency to the department. If the agency has not paid the department or notified the department of a dispute within thirty days of receipt of the invoice, the department shall notify the department of finance and administration and request that the department of finance and administration transfer funds from the agency to the department of information technology to satisfy the agency's obligation.

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

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

(2) coordination among executive agencies in

the development and maintenance of information technology systems; and

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

G. 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.

H. Where information technology functions of executive agencies overlap or a function assigned to one agency could better be performed by another agency, the secretary may recommend appropriate legislation to the next session of the legislature for its approval.

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

- (1) information technology security;
- (2) approval for procurement of information technology that exceeds an amount set by rule;
- (3) detail and format for the agency

information technology plan;

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

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

J. 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 and mailed at least thirty days prior to the hearing date to all persons who have made a written request for an advance notice of hearing. Rules shall be filed in accordance with the State Rules Act."

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

"9-27-7. INFORMATION TECHNOLOGY RATE COMMITTEE--

MEMBERSHIP--DUTIES.--

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

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

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

(3) the secretary of information technology.

B. The information technology rate committee shall:

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

(2) ensure that the rate and fee schedule complies with the federal office of management and budget circular A-87 or its successor directive;

(3) consider for approval an equitable rate and fee schedule based on cost recovery for state agencies that use information technology services and pay rates to an internal service fund, with priority service to public safety agencies;

(4) present the committee's proposed rate and fee schedule by June 1 of each year to the office of the governor, the department of finance and administration and the legislative finance committee; and

(5) by July 15 of each year, implement a rate and fee schedule based on the committee's recommendations; provided, however, that a reduction in rates or fees by the department shall not require the committee's approval if the reduction is based on cost recovery and if the committee is notified timely."

Section 4. Section 9-27-9 NMSA 1978 (being Laws 2007, Chapter 290, Section 9) is amended to read:

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

A. The "information technology commission" is created. The commission consists of fifteen voting members as follows:

(1) four members appointed by the governor, who are not from the higher education department or the public education department;

(2) one staff member with telecommunications regulatory experience appointed by the chair of the public regulation commission;

(3) two members representing education, one appointed by the secretary of higher education and one appointed by the secretary of public education;

(4) two members appointed by the governor to represent local government, one appointment to be selected by the governor from a list of three names provided by the New

Mexico association of counties and one appointment to be selected by the governor from a list of three names provided by the New Mexico municipal league;

(5) two members appointed at-large by the governor;

(6) two members appointed by the governor to represent local telecommunications service providers; and

(7) two members from the national laboratories appointed by the respective laboratory director.

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

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

(2) one staff member from the legislative council service and one staff member from the legislative finance committee, appointed by their respective directors; and

(3) the secretary as chief information officer.

C. No appointee or designee of the commission from a state agency shall be less than the deputy head of the agency.

D. A registered lobbyist under the Lobbyist Regulation Act shall not serve on the commission while

registered as a lobbyist or for one year after terminating work as a lobbyist in compliance with the termination requirements of the Lobbyist Regulation Act.

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

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

G. The commission shall elect a chair and vice chair from the active voting membership of the commission for two-year terms.

H. The department shall provide staff to the commission.

I. The commission shall meet at least quarterly to review and approve:

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

(2) critical information technology initiatives for the state;

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

(4) strategies for identifying information technology projects that affect multiple agencies;

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

(6) proposed rules by the secretary; and

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

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

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

A. In order to plan for the expenditure of capital investments necessary to provide goods and services to the state and its agencies and to local public bodies and other enterprise customers, the department shall establish and maintain an equipment replacement plan for each of the department's enterprise functions. No later than September 1 of each year, the plans shall be submitted to the department of finance and administration, the information technology commission and the legislature, accompanied by a reconciliation report of the preceding fiscal year reflecting financial activity in each of the equipment replacement revolving funds established pursuant to this section.

B. Upon the request of the secretary, the state treasurer shall establish in the state treasury such

"equipment replacement revolving funds" as are necessary to administer each of the department's enterprise functions. The revolving funds shall consist of legislative appropriations to the funds and transfers made to the funds pursuant to Subsections C and D of this section. Income from investment of the revolving funds shall be credited back to the funds, and money in the funds shall not revert at the end of a fiscal year. Expenditures from the funds shall only be made pursuant to an appropriation from the legislature and only for the purpose of acquiring and replacing capital equipment and associated software used to provide enterprise services pursuant to the department's equipment replacement plans.

C. The department shall record amounts due to the equipment replacement revolving funds each fiscal year, based on the calculation of amortization and depreciation applicable to each enterprise service as reflected in the department's published cost structures for calculation of rates for services. Transfers to the funds shall be made from the operating funds of each enterprise in amounts that reconcile with the recorded amounts due. The recording of amounts due to the equipment replacement revolving funds and the transfer of the funds shall be consistent with generally accepted accounting principles.

D. The department may make initial transfers from its operating funds to establish the beginning fund balances

as of July 1, 2008."

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

"HUMAN RESOURCES--ACCOUNTING AND MANAGEMENT REPORTING.--

The department shall:

A. enter into a memorandum of understanding with the department of finance and administration for the joint design, development, acquisition and implementation of the statewide human resources, accounting and management reporting system or its successor system;

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

C. ensure that an amount equal to at least the annual depreciation and amortization be deposited in a separately identifiable account for software upgrades and equipment replacement."

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

"15-5-2. CENTRAL TELEPHONE SERVICES--STAFF--BUDGET.--

The telecommunications bureau of the enterprise services division of the department shall provide the staff and

material necessary to properly and adequately operate the central telephone system. The budget for the central telephone system shall be approved as part of the total operating budget of the department."

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

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

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

"15-5-6. PARTICIPATION OR EXCLUSION OF AGENCY, DEPARTMENT OR INSTITUTION.--All departments, institutions and agencies of the state government to the extent that it is practical and feasible shall participate in the central telephone system. No agreement for any leased or purchased telephone service or for purchase of any telephone equipment shall be entered into by any department, institution or agency of the state participating in the central telephone system, except those institutions enumerated in Article 12, Section 11

of the constitution of New Mexico, except upon prior written approval of the secretary or the secretary's designee. If, on the basis of a technical survey, it is found to be infeasible or impractical to include particular agencies, departments or institutions in the central telephone system, the secretary or the secretary's designee may exclude them. In the event of exclusion of any agency, department or institution, the secretary or the secretary's designee shall file a written statement, certifying the reasons therefor, with the state records center."

Section 10. TEMPORARY PROVISION--RECOMPILATION INSTRUCTIONS.--Sections 15-2-1 through 15-2-8 and 15-5-1, 15-5-3 and 15-5-4 NMSA 1978 (being Laws 1977, Chapter 247, Sections 23 and 24, Laws 1997, Chapter 263, Section 1, Laws 1970, Chapter 71, Section 1, Laws 1966, Chapter 32, Section 3, Laws 1971, Chapter 115, Section 2, Laws 1975, Chapter 214, Section 4 and Laws 1963, Chapter 181, Sections 1, 3 and 4, as amended) are recompiled as part of Chapter 9, Article 27 NMSA 1978.

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