

1 SENATE BILL 83

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO GOVERNMENT ACCOUNTABILITY; CREATING THE STATE
12 INSPECTOR GENERAL AND THE OFFICE OF GOVERNMENT ACCOUNTABILITY;
13 PROVIDING POWERS AND DUTIES; PROVIDING FOR PROGRAM EVALUATION
14 BY THE LEGISLATIVE FINANCE COMMITTEE OF AGENCIES AND ENTITIES
15 THAT RECEIVE STATE FUNDING; PROVIDING FOR THE RECEIPT AND
16 PROTECTION OF CONFIDENTIAL MATERIAL BY THE LEGISLATIVE FINANCE
17 COMMITTEE; TRANSFERRING DUTIES OF THE OFFICE OF EDUCATION
18 ACCOUNTABILITY OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION
19 TO THE OFFICE OF GOVERNMENT ACCOUNTABILITY; ELIMINATING THE
20 OFFICE OF EDUCATION ACCOUNTABILITY; TRANSFERRING THE DUTIES OF
21 INSPECTORS GENERAL, INTERNAL AUDIT AND ACCOUNTABILITY FUNCTIONS
22 FROM CERTAIN AGENCIES TO THE OFFICE OF GOVERNMENT
23 ACCOUNTABILITY; PROVIDING FOR TRANSFERS OF FUNCTIONS,
24 PERSONNEL, APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL
25 OBLIGATIONS AND REFERENCES; AMENDING, REPEALING AND ENACTING

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1 SECTIONS OF THE NMSA 1978.

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

4 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
5 through 4 of this act may be cited as the "State Inspector
6 General Act".

7 SECTION 2. [NEW MATERIAL] STATE INSPECTOR GENERAL--OFFICE
8 OF GOVERNMENT ACCOUNTABILITY--CREATED--PERSONNEL.--

9 A. The "office of government accountability" is
10 created as an adjunct agency as provided in the Executive
11 Reorganization Act. The office shall be headed by the "state
12 inspector general".

13 B. The state inspector general shall be appointed
14 by the governor with the consent of the senate, without regard
15 to political affiliation and solely on the basis of integrity
16 and demonstrated ability in accounting, auditing, financial
17 analysis, law, management analysis, public administration or
18 investigations. The state inspector general shall serve for
19 six years and may be reappointed for succeeding six-year terms.

20 C. The state inspector general may be removed by
21 the governor for incompetency, malfeasance or willful neglect
22 of duty. If the governor seeks to remove the state inspector
23 general from office, the governor shall communicate in writing
24 the reasons for removal to the legislature not later than
25 thirty days before the removal. The governor shall not remove

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1 the state inspector general unless the removal is approved by a
2 two-thirds vote of the members of the senate.

3 D. Within available appropriations, the state
4 inspector general may employ such professional and clerical
5 assistants as deemed necessary.

6 SECTION 3. [NEW MATERIAL] OFFICE OF GOVERNMENT

7 ACCOUNTABILITY--DUTIES.--The office of government
8 accountability shall:

9 A. have general oversight authority over the
10 executive branch's implementation of the Accountability in
11 Government Act and the State Inspector General Act, including
12 the authority to conduct internal audits and investigations;

13 B. have the authority to audit and investigate
14 executive branch agencies and programs, school districts,
15 state-chartered charter schools, state educational
16 institutions, including community colleges and branch campuses,
17 and all other recipients of state funding, including government
18 contractors, to ensure efficient and effective operations, the
19 proper use of public funding and the detection and prevention
20 of fraud, waste and abuse;

21 C. provide an independent evaluation of the
22 Assessment and Accountability Act and the School Personnel Act
23 by:

24 (1) monitoring the implementation of those
25 acts;

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1 (2) verifying the accuracy of reports of
2 public school, school district and state performance; and

3 (3) conducting studies of other states'
4 efforts at assessment, accountability and other educational
5 reforms and reporting its findings to the legislative education
6 study committee and legislative finance committee;

7 D. plan and coordinate the work of the office of
8 government accountability and the work of inspectors general
9 from individual agencies with the legislative finance committee
10 and report the results to the governor, the legislative finance
11 committee and the legislature;

12 E. act as inspector general to conduct internal
13 audit and accountability functions of the public education
14 department, the higher education department, the department of
15 health, the human services department, the corrections
16 department and the children, youth and families department;

17 F. review and approve work plans and reports
18 relating to the inspector general, internal audits and
19 accountability functions in the workforce solutions department,
20 the taxation and revenue department and the department of
21 transportation, including approving the hiring of inspectors
22 general and staff;

23 G. coordinate activities with the medicaid fraud
24 and elder abuse division of the attorney general's office;

25 H. be responsible for recommending changes or

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1 corrective action and for reporting on progress made to improve
2 operations and to recover misspent public funding;

3 I. refer potential criminal matters to the attorney
4 general or local district attorneys;

5 J. as requested by the governor or an interim
6 legislative committee, gather state agency information and
7 analyze and validate the information; provided, however, that
8 this duty shall not affect the duty of a state agency to
9 otherwise provide information in a timely manner upon request
10 of an interim legislative committee;

11 K. perform other duties that may be assigned by the
12 governor;

13 L. assist state agencies in resolving audit
14 findings and reviewing performance measures;

15 M. contract for special audits and investigations
16 as necessary;

17 N. have the authority to accept federal funds to
18 perform duties consistent with the State Inspector General Act;
19 and

20 O. promulgate rules necessary to carry out the
21 duties of the office.

22 SECTION 4. [NEW MATERIAL] STATE INSPECTOR GENERAL--
23 COOPERATION OF STATE AGENCIES.--

24 A. Inspectors general and internal auditors of
25 state agencies shall report to the state inspector general

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1 periodically and as requested.

2 B. The medicaid fraud and elder abuse division of
3 the attorney general's office shall cooperate with the office
4 of government accountability.

5 SECTION 5. A new section of Chapter 2, Article 5 NMSA
6 1978 is enacted to read:

7 "[NEW MATERIAL] LEGISLATIVE FINANCE COMMITTEE--PROGRAM
8 EVALUATION AND REVIEW.--

9 A. As used in this section, "agency" means any
10 department, agency, institution or instrumentality of the state
11 or a political subdivision of the state.

12 B. The legislative finance committee shall
13 establish a "program evaluation division" staffed by persons
14 knowledgeable and proficient in program and performance
15 evaluation, research or policy analysis. The committee shall
16 appoint program evaluation division staff without regard to
17 party affiliation and solely on the appointees' fitness to
18 perform the duties of the positions for which they are hired.

19 C. The program evaluation division shall conduct
20 program evaluations, information technology evaluations and
21 special reviews of agencies to provide policymakers with
22 objective, independent and credible assessments of those
23 agencies to allow policymakers to:

24 (1) determine whether expenditures of public
25 funds are producing desired results;

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1 (2) determine whether agencies are complying
2 with state and federal procedures relevant to their operation
3 and funding;

4 (3) determine whether policy alternatives
5 could improve operations and save money; and

6 (4) assess the effect of agency operations on
7 state finances.

8 D. The program evaluation division shall report the
9 results of work performed pursuant to this section to the
10 legislative finance committee and shall make final reports
11 available to the legislature and the public. Background
12 material, including working papers and notes, used as part of
13 any program evaluation or review are not public records for the
14 purpose of the Inspection of Public Records Act."

15 SECTION 6. Section 2-5-7 NMSA 1978 (being Laws 1957,
16 Chapter 3, Section 6, as amended) is amended to read:

17 "2-5-7. COOPERATION.--~~[Each]~~

18 A. An agency ~~[or institution of the state and its~~
19 ~~political subdivisions]~~ shall, upon request, furnish and make
20 available to the legislative finance committee such documents,
21 material or information as may be requested by ~~[the members of]~~
22 the committee or its director or staff ~~[which are not made~~
23 ~~confidential by law]~~. Information provided by an agency under
24 this section that is confidential by law or exempt from public
25 inspection under the Inspection of Public Records Act shall not

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1 be disclosed by members of the committee, its director or
2 staff.

3 B. As used in this section, "agency" means any
4 department, agency, institution or instrumentality of the state
5 or a political subdivision of the state."

6 SECTION 7. Section 6-3A-1 NMSA 1978 (being Laws 1999,
7 Chapter 5, Section 1 and Laws 1999, Chapter 15, Section 1) is
8 amended to read:

9 "6-3A-1. SHORT TITLE.--~~[Sections 1 through 8 of this act]~~
10 Chapter 6, Article 3A NMSA 1978 may be cited as the
11 "Accountability in Government Act"."

12 SECTION 8. Section 6-3A-3 NMSA 1978 (being Laws 1999,
13 Chapter 5, Section 3 and Laws 1999, Chapter 15, Section 3, as
14 amended) is amended to read:

15 "6-3A-3. DEFINITIONS.--As used in the Accountability in
16 Government Act:

17 A. "agency" means a branch, department,
18 institution, board, bureau, commission, district or committee
19 of the state;

20 B. "approved program" means a program included in
21 an approved list of programs issued by the division pursuant to
22 Section 6-3A-4 NMSA 1978;

23 C. "baseline data" means the current level of a
24 program's performance measures established pursuant to
25 guidelines established by the division in consultation with the

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1 committee;

2 D. "committee" means the legislative finance
3 committee or a designated member of its staff;

4 E. "division" means the state budget division of
5 the department of finance and administration;

6 F. "outcome" means the measurement of the actual
7 impact or public benefit of a program;

8 G. "output" means the measure of the volume of work
9 completed or the level of actual services or products delivered
10 by a program;

11 H. "performance-based program budget" means a
12 budget that identifies a total allowed expenditure for a
13 program and includes performance measures, performance
14 standards and program evaluations;

15 I. "performance measure" means a quantitative or
16 qualitative indicator used to assess the output or outcome of
17 an approved program;

18 J. "performance target" means the expected level of
19 performance of a program's performance measures; and

20 K. "program" means a set of activities undertaken
21 in accordance with a plan of action organized to realize
22 identifiable goals and objectives based on legislative
23 authorization."

24 SECTION 9. A new section of the Accountability in
25 Government Act is enacted to read:

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1 "[NEW MATERIAL] EFFECT ON APPROPRIATIONS.--Nothing in the
2 Accountability in Government Act prevents the legislature from
3 changing appropriation patterns, programs or performance
4 measures in a general appropriation act."

5 SECTION 10. Section 6-3A-7 NMSA (being Laws 1999, Chapter
6 5, Section 7 and Laws 1999, Chapter 15, Section 7, as amended)
7 is amended to read:

8 "6-3A-7. PERFORMANCE-BASED PROGRAM BUDGET REQUESTS.--

9 A. The division, in consultation with the
10 committee, shall develop instructions for those agencies
11 required to submit performance-based program budget requests.
12 The instructions shall be sent to the agencies on or before
13 June 15 of each year and shall be in addition to any other
14 forms required by Section 6-3-18 NMSA 1978. The instructions
15 shall require that performance-based program budget requests
16 contain the following:

17 (1) a summary of each approved program,
18 including a justification for the program;

19 (2) for each approved program, an evaluation
20 of the agency's progress in meeting the performance targets.
21 The evaluation shall be developed as prescribed in the budget
22 instructions;

23 (3) for each approved program, the outputs,
24 outcomes, baseline data, performance measures and historic and
25 proposed performance targets;

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1 ~~[(4) if a performance audit has been conducted~~
2 ~~on an approved program during either the present or any of the~~
3 ~~immediately preceding two fiscal years, any responses that the~~
4 ~~agency may have to the audit and any actions that the agency~~
5 ~~has taken as a result of the audit; and]~~

6 (4) progress reports on the corrective actions
7 taken in response to recommendations made by the program
8 evaluation division of the committee and audits by the office
9 of government accountability; and

10 (5) any other information that the division
11 believes may be useful to the division or the legislature in
12 developing a budget for the agency."

13 SECTION 11. Section 22-1-11 NMSA 1978 (being Laws 2010,
14 Chapter 112, Section 1) is amended to read:

15 "22-1-11. EDUCATIONAL DATA SYSTEM.--

16 A. As used in this section:

17 (1) "council" means the data system council;

18 (2) "data system" means the unified pre-
19 kindergarten through post-graduate education accountability
20 data system;

21 (3) "data system partners" means the public
22 education department and the higher education department;

23 (4) "educational agencies" means other public
24 agencies and institutions that provide educational services for
25 resident school-age persons and children in state-funded

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1 private pre-kindergarten programs; and

2 (5) "pre-kindergarten through post-graduate
3 system" means an integrated, seamless pre-kindergarten through
4 post-graduate system of education.

5 B. The data system partners, in consultation with
6 the council, shall establish a data system, the purpose of
7 which is to:

8 (1) collect, integrate and report longitudinal
9 student-level and educator data required to implement federally
10 or state-required education performance accountability
11 measures;

12 (2) conduct research and evaluation regarding
13 federal, state and local education and training programs at all
14 levels; and

15 (3) audit and ensure compliance of those
16 programs with applicable federal or state requirements.

17 C. The components of the data system shall include
18 the use of a common student identifier for the pre-kindergarten
19 through post-graduate system and an educator identifier, both
20 of which may include additional identifiers, with the ability
21 to match educator data to student data and educator data to
22 data from schools, post-secondary education programs and other
23 educational agencies.

24 D. The data system partners shall convene a "data
25 system council" made up of the following members:

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1 (1) the secretary of public education or the
2 secretary's designee;

3 (2) the secretary of higher education or the
4 secretary's designee;

5 (3) the secretary of children, youth and
6 families or the secretary's designee;

7 (4) the secretary of workforce solutions or
8 the secretary's designee;

9 (5) the secretary of economic development or
10 the secretary's designee;

11 (6) the secretary of information technology or
12 the secretary's designee;

13 (7) the secretary of human services or the
14 secretary's designee;

15 (8) the secretary of health or the secretary's
16 designee;

17 [~~(9)~~] ~~the director of the office of education~~
18 ~~accountability or the director's designee;~~

19 ~~(10)~~] (9) the director of the public school
20 facilities authority or the director's designee;

21 [~~(11)~~] (10) a representative from the office
22 of the governor;

23 [~~(12)~~] (11) the presidents or their designees
24 of one research university, one four-year comprehensive
25 university, two branch colleges and two independent community

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1 colleges; provided that the presidents shall be selected by the
2 data system partners in collaboration with organizations that
3 represent the presidents of those institutions;

4 [~~(13)~~] (12) at least six public school
5 superintendents or their designees; provided that the
6 appointments by the data system partners shall be made so that
7 small, medium and large school districts are equally
8 represented on the council at all times;

9 [~~(14)~~] (13) at least three charter school
10 administrators or their designees appointed by the data system
11 partners;

12 [~~(15)~~] (14) the director of the legislative
13 education study committee or the director's designee; and

14 [~~(16)~~] (15) the director of the legislative
15 finance committee or the director's designee.

16 E. The council shall:

17 (1) meet at least four times each calendar
18 year;

19 (2) create a management plan that assigns
20 authority and responsibility for the operation of the data
21 system among the educational agencies whose data will be
22 included in the data system;

23 (3) assist the educational agencies whose data
24 will be included in the data system in developing interagency
25 agreements to:

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1 (a) enable data to be shared across and
2 between the educational agencies;

3 (b) define appropriate uses of data;

4 (c) assure researcher access to data;

5 (d) assure the security of the data
6 system;

7 (e) ensure that the educational system
8 agencies represented on the council, the legislative education
9 study committee, the legislative finance committee and other
10 users, as appropriate, have access to the data system; and

11 (f) ensure the privacy of any person
12 whose personally identifiable information is contained in the
13 data system;

14 (4) develop a strategic plan for the data
15 system; and

16 (5) create policies that ensure users have
17 prompt and reasonable access to reports generated from the data
18 system, including:

19 (a) identification of categories of data
20 system users based on security level;

21 (b) descriptions of the reports that the
22 data system is capable of generating on demand; and

23 (c) definitions of the most timely
24 process by which users may retrieve other reports without
25 compromising the security of the data system or the privacy of

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1 any person whose personally identifiable information is
2 contained in the data system.

3 F. The data system strategic plan shall include:

4 (1) the development of policy and practical
5 goals, including time lines and budget goals, that are to be
6 met through the implementation of the data system; and

7 (2) the training and professional development
8 that the data system partners will provide to users who will be
9 analyzing, accessing or entering data into the data system.

10 G. The confidentiality of personally identifiable
11 student and educator data shall be safeguarded consistent with
12 the requirements of state and federal law. To the extent
13 permitted by the data system partners in conformance with state
14 and federal law, public entities participating in the data
15 system may:

16 (1) disclose or redisclose data for
17 educational purposes and longitudinal comparisons, analyses or
18 studies, including those authorized by law;

19 (2) enter into agreements with other
20 organizations for research studies to improve instruction for
21 the benefit of local educational agencies, public schools and
22 post-secondary educational institutions, subject to safeguards
23 to ensure that the research organization uses the student
24 records only for the authorized study purposes; and

25 (3) disclose education records to a student's

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1 former secondary school or school district upon request solely
2 for purposes of evaluation or accountability for its programs.

3 H. Nothing in this section precludes the data
4 system partners, in consultation with school districts, charter
5 schools and public post-secondary educational institutions,
6 from collecting and distributing aggregate data about students
7 or educators or data about an individual student or educator
8 without personally identifiable information.

9 I. The data system partners, in consultation with
10 school districts, charter schools and public post-secondary
11 educational institutions, shall jointly adopt rules to carry
12 out the provisions of this section, including security
13 administration requirements and the provision of training for
14 data entry personnel at all levels.

15 J. By December 31 of each year, the data system
16 partners shall submit a data system status report to the
17 legislature and to the governor. Prior to submission and
18 publication of the report referred to in Subsection K of this
19 section, the data system partners shall distribute a draft of
20 the report to school districts, charter schools and all public
21 post-secondary educational institutions to allow comment on the
22 draft report.

23 K. The data system partners, in consultation with
24 school districts, charter schools and public post-secondary
25 educational institutions, shall develop and adopt the content

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1 and a format for the report, including the ability of the data
2 system to:

3 (1) connect student records from pre-
4 kindergarten through post-graduate education;

5 (2) connect public school educator data to
6 student data;

7 (3) match individual public school students'
8 test records from year to year to measure academic growth,
9 including student-level college and career readiness test
10 scores;

11 (4) report the number and percentage of
12 untested public school students by school district and by
13 school and by major ethnic group, special education status,
14 poverty status and gender;

15 (5) report high school longitudinal graduation
16 and dropout data, including information that distinguishes
17 between dropouts or students whose whereabouts are unknown and
18 students who have transferred to other schools, including
19 private schools or home schools, other school districts or
20 other states;

21 (6) provide post-secondary remediation data,
22 including assessment scores on exams used to determine the need
23 for remediation;

24 (7) provide post-secondary remedial course
25 enrollment history, including the number and type of credit and

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1 noncredit remedial courses being taken;

2 (8) report post-secondary retention data that
3 indicate whether students are returning the second fall term
4 after being enrolled as full-time first-time degree-seeking
5 students;

6 (9) report to New Mexico public high schools
7 on their students who enroll in a public post-secondary
8 educational institution within three years of graduating or
9 leaving the high school regarding freshman-year outcomes;

10 (10) provide post-secondary student completion
11 status, including information that indicates if students are
12 making annual progress toward their degrees;

13 (11) include data regarding students who have
14 earned a general educational development certificate in
15 reporting post-secondary outcomes;

16 (12) report data collected for the educator
17 accountability reporting system;

18 (13) report pre-kindergarten through post-
19 graduate student-level enrollment data, demographic information
20 and program participation information;

21 (14) report pre-kindergarten through post-
22 graduate student-level transcript information, including
23 information on courses completed, grades earned and cumulative
24 grade point average;

25 (15) connect performance with financial

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1 information;

2 (16) establish and maintain a state data audit
3 system to assess the quality, validity and reliability of data;
4 and

5 (17) provide any other student-level and
6 educator data necessary to assess the performance of the pre-
7 kindergarten through post-graduate system."

8 SECTION 12. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,
9 APPROPRIATIONS, PERSONNEL AND PROPERTY--CONTRACTUAL
10 OBLIGATIONS--STATUTORY REFERENCES.--

11 A. On July 1, 2011, all appropriations, money,
12 personnel, furniture, equipment and other property of the
13 office of education accountability of the department of finance
14 and administration shall be transferred to the office of
15 government accountability.

16 B. On July 1, 2011, contractual obligations of the
17 office of education accountability shall be binding on the
18 office of government accountability.

19 C. On July 1, 2011, all references in the law to
20 the office of education accountability shall be deemed to be
21 references to the office of government accountability.

22 D. On July 1, 2011, all functions, appropriations,
23 money, personnel, records, furniture, equipment and other
24 property dedicated to the inspector general, internal audit and
25 other accountability functions of the public education

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1 department and the higher education department shall be
2 transferred to the office of government accountability.

3 E. On July 1, 2011, contractual obligations
4 relating to the inspector general, internal audit and other
5 accountability functions of the public education department and
6 the higher education department shall be binding on the office
7 of government accountability.

8 F. On July 1, 2011, all references in the law to
9 the inspector general, internal audit and other accountability
10 functions of the public education department and the higher
11 education department shall be deemed to be references to the
12 office of government accountability.

13 G. No later than July 1, 2012, all functions,
14 appropriations, money, personnel, records, furniture, equipment
15 and other property dedicated to the inspector general, internal
16 audit and other accountability functions of the following
17 agencies shall be transferred to the office of government
18 accountability:

- 19 (1) the department of health;
20 (2) the human services department;
21 (3) the corrections department; and
22 (4) the children, youth and families
23 department.

24 H. No later than July 1, 2012, contractual
25 obligations relating to the inspector general, internal audit

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1 and other accountability functions of the following agencies
2 shall be binding on the office of government accountability:

- 3 (1) the department of health;
- 4 (2) the human services department;
- 5 (3) the corrections department; and
- 6 (4) the children, youth and families
7 department.

8 I. No later than July 1, 2012, all references in
9 the law to the inspector general, internal audit and other
10 accountability functions of the following agencies shall be
11 deemed to be references to the office of government
12 accountability:

- 13 (1) the department of health;
- 14 (2) the human services department;
- 15 (3) the corrections department; and
- 16 (4) the children, youth and families
17 department.

18 **SECTION 13. REPEAL.**--Section 9-6-15 NMSA 1978 (being Laws
19 2003, Chapter 153, Section 69) is repealed.

20 **SECTION 14. EFFECTIVE DATE.**--The effective date of the
21 provisions of this act is July 1, 2011.