

FIFTY-THIRD LEGISLATURE
FIRST SESSION, 2017

HB 113/a

March 1, 2017

Mr. President:

Your **PUBLIC AFFAIRS COMMITTEE**, to whom has been referred
**HOUSE STATE GOVERNMENT, INDIAN AND VETERANS AFFAIRS
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 113, as amended**

has had it under consideration and reports same with recommendation
that it **DO PASS**, amended as follows:

1. On page 1, line 11, strike "PROVIDING FOR THE CHIEF" and
strike lines 12 and 13 in their entirety and insert in lieu thereof
"AMENDING SECTIONS OF THE DEPARTMENT OF INFORMATION TECHNOLOGY ACT
TO PROVIDE FOR THE DEPARTMENT TO COORDINATE THE DEVELOPMENT OF A
STATEWIDE BROADBAND NETWORK; PROVIDING FOR A CENTRAL
TELECOMMUNICATION NETWORK; RECONCILING CONFLICTING SECTIONS OF LAW
BY REPEALING LAWS 2007, CHAPTER 288, SECTION 3.".

2. On pages 1 through 3, strike Section 1 in its entirety and
insert in lieu thereof:

"SECTION 1. Section 9-27-3 NMSA 1978 (being Laws 2007, Chapter
290, Section 3) is amended to read:

"9-27-3. DEFINITIONS.--As used in the Department of
Information Technology Act:

A. "department" means the department of information
technology;

B. "information technology" means computer hardware and
software and ancillary products and services, including:

(1) systems design and analysis;

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- (2) acquisition, storage and conversion of data;
- (3) computer programming;
- (4) information storage and retrieval;
- (5) voice, radio, video and data communications;
- (6) requisite systems;
- (7) simulation and testing; and
- (8) related interactions between users and information systems;

C. "information technology project" means the purchase, replacement, development or modification of a hardware or software system;

D. "secretary" means the secretary of information technology;

E. "state information architecture" means a logically consistent set of principles, policies and standards that guides the engineering of state government's information technology systems and infrastructure in a way that ensures alignment with state government's business needs; [~~and~~]

F. "state information technology strategic plan" means the information technology planning document for the state that spans a three-year period; and

G. "telecommunication network" means the physical and logical components and all associated infrastructure used in transporting, routing, aggregating and delivering voice and data information from computer and telecommunications systems in one location to peer systems in another."

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SECTION 2. Section 9-27-6 NMSA 1978 (being Laws 2007, Chapter 290, Section 6, as amended) 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

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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

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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

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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

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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

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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;

(4) development of a statewide broadband network plan in conjunction with the public education department, the higher education department, state universities, other educational institutions, the public school capital outlay council, political subdivisions of the state, Indian nations, tribes and pueblos, the public regulation commission and telecommunication network service providers; and

(5) coordination and aggregation of services where feasible for entities as provided for in Section 9-27-20 NMSA 1978 and other publicly funded entities.

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

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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

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accordance with the State Rules Act."

SECTION 3. Section 9-27-20 NMSA 1978 (being Laws 1963, Chapter 181, Section 1, as amended by Laws 2007, Chapter 288, Section 3 and by Laws 2007, Chapter 290, Section 20) is amended to read:

"9-27-20. TELECOMMUNICATIONS--DUTIES.--

A. The department [~~of information technology~~] shall enter into necessary agreements to provide, where feasible, a [~~central telephone system, including wide-area telephone service~~] telecommunication network and related facilities to all executive, legislative and judicial branches. Nothing in this section shall be construed to apply to the provision of a [~~central telephone system~~] telecommunication network and related facilities to political subdivisions of the state.

B. Pursuant to Section 9-27-13 NMSA 1978, the department may, where feasible and economical, provide a telecommunication network and related facilities to educational institutions that request to be included in the telecommunication network and shall enter into the necessary contractual agreements with telecommunication providers to provide the telecommunication network and related facilities to educational institutions that request to be included in the telecommunication network.

C. Pursuant to Sections 9-27-6 and 9-27-13 NMSA 1978, the department and the public education department shall coordinate to apply for reimbursements from the federal universal service fund pursuant to Section 254 of the federal Telecommunications Act of 1996, 47 U.S.C. 254, as such section existed on January 1, 2006, on behalf of state agencies, political subdivisions and educational institutions as available for telecommunication network services.

D. Pursuant to Section 9-27-7 NMSA 1978, the department shall establish a rate structure based on actual costs, including necessary administrative expenses, and shall charge participants

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according to such rate structure."

SECTION 4. Section 9-27-21 NMSA 1978 (being Laws 1963, Chapter 181, Section 2, as amended) is amended to read:

"9-27-21. CENTRAL [~~TELEPHONE~~] TELECOMMUNICATION NETWORK 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~~] telecommunication network. The budget for the central [~~telephone system~~] telecommunication network shall be approved as part of the total operating budget of the department."

SECTION 5. Section 9-27-22 NMSA 1978 (being Laws 1963, Chapter 181, Section 3, as amended) is amended to read:

"9-27-22. CHARGES FOR CENTRAL [~~TELEPHONE~~] TELECOMMUNICATION NETWORK SERVICES.--Departments, institutions and agencies participating in the central [~~telephone system~~] telecommunication network shall be charged a pro rata and equitable share of the total monthly costs of the service. This determination is to be made by the department [~~of information technology~~]. Toll calls not covered by the wide-area telephone service and supplemental equipment shall be segregated and paid for by agencies, institutions and departments making the calls or using the supplemental equipment."

SECTION 6. Section 9-27-23 NMSA 1978 (being Laws 1963, Chapter 181, Section 4, as amended) is amended to read:

"9-27-23. DEPOSIT OF MONEY.--The department [~~of information technology~~] shall order the deposit or transfer monthly to a fund known as the "central [~~telephone services~~] telecommunication network fund" the amount of money owed by each department, institution and agency utilizing the central [~~telephone system~~] telecommunication network. State institutions and agencies shall adopt such accounting procedures as are prescribed by the department of finance

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and administration for the handling of payments with reference to the central [~~telephone system~~] telecommunication network."

SECTION 7. Section 9-27-24 NMSA 1978 (being Laws 1963, Chapter 181, Section 5, as amended) is amended to read:

"9-27-24. APPROPRIATION.--All income to the central [~~telephone services~~] telecommunication network fund is appropriated to carry out the purposes of Sections [~~15-5-1 through 15-5-6~~] 9-27-20 through 9-27-25 NMSA 1978 or their successor recompiled sections. Payments from the central [~~telephone services~~] telecommunication network fund shall be made on vouchers signed by the secretary or the secretary's designee."

SECTION 8. Section 9-27-25 NMSA 1978 (being Laws 1963, Chapter 181, Section 6, as amended) is amended to read:

"9-27-25. 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~~] telecommunication network. 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~~] telecommunication network, 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~~] telecommunication network, 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."

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

"[NEW MATERIAL] INDIAN NATIONS, TRIBES AND PUEBLOS--STATEWIDE BROADBAND--RIGHT-OF-WAY AGREEMENT.--Indian nations, tribes and pueblos may connect to the statewide broadband network in exchange for a right-of-way agreement with the chief information officer. The chief information officer shall apply for reimbursements from the federal universal service fund pursuant to Section 254 of the federal Telecommunications Act of 1996, 47 U.S.C. 254, as such section existed on January 1, 2006, on behalf of Indian nations, tribes and pueblos that execute a right-of-way agreement."

SECTION 10. REPEAL.--Laws 2007, Chapter 888, Section 3 is repealed.".,

and thence referred to the **CORPORATIONS AND TRANSPORTATION**

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COMMITTEE.

Respectfully submitted,

Gerald Ortiz y Pino, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Ingle

Absent: None

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