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HOUSE BILL 99

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO LAW ENFORCEMENT; PROVIDING THE SECRETARY OF TAXATION AND REVENUE AND THE SECRETARY OF HUMAN SERVICES WITH AUTHORITY TO APPOINT INVESTIGATORS VESTED WITH THE POWERS OF PEACE OFFICERS; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 7-1-4 NMSA 1978 (being Laws 1965, Chapter 248, Section 10, as amended) is amended to read:

"7-1-4. INVESTIGATIVE AUTHORITY AND POWERS. --

A. For the purpose of establishing or determining the extent of the liability of any person for any tax, for the purpose of collecting any tax or for the purpose of enforcing any statute administered under the provisions of the Tax Administration Act, the secretary or the secretary's delegate is authorized to examine equipment and to examine and require

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1 the production of any pertinent records, books, information or
2 evidence, to require the presence of any person and to require
3 that person to testify under oath concerning the subject
4 matter of the inquiry and to make a permanent record of the
5 proceedings.

6 B. As a means for accomplishing the matters
7 referred to in Subsection A of this section, the secretary is
8 hereby invested with the power to issue subpoenas and
9 summonses. In no case shall a subpoena or summons be made
10 returnable less than ten days from the date of service.

11 C. Any subpoena or summons issued by the secretary
12 shall state with reasonable certainty the nature of the
13 evidence required to be produced, the time and place of the
14 hearing, the nature of the inquiry or investigation and the
15 consequences of failure to obey the subpoena or summons; shall
16 bear the seal of the department; and shall be attested by the
17 secretary.

18 D. After service of a subpoena or summons upon the
19 person, if any person neglects or refuses to appear in
20 response to the summons or neglects or refuses to produce
21 records or other evidence or to allow the inspection of
22 equipment in response to the subpoena or neglects or refuses
23 to give testimony as required, the department may invoke the
24 aid of the court in the enforcement of the subpoena or
25 summons. In appropriate cases, the court shall issue its

1 order requiring the person to appear and testify or produce
2 books or records and may, upon failure of the person to comply
3 with the order, punish the person for contempt.

4 E. The secretary may appoint and commission
5 investigators needed to enforce the provisions of all laws
6 administered by the department. The investigators shall have
7 all the powers and duties of peace officers. "

8 Section 2. Section 9-8-6 NMSA 1978 (being Laws 1977,
9 Chapter 252, Section 7, as amended) is amended to read:

10 "9-8-6. SECRETARY-- DUTIES AND GENERAL POWERS. --

11 A. The secretary is responsible to the governor
12 for the operation of the department. It is his duty to manage
13 all operations of the department and to administer and enforce
14 the laws with which he or the department is charged.

15 B. To perform his duties, the secretary has every
16 power expressly enumerated in the laws, whether granted to the
17 secretary or the department or any division of the department,
18 except where authority conferred upon any division is
19 explicitly exempted from the secretary's authority by statute.
20 In accordance with these provisions, the secretary shall:

21 (1) except as otherwise provided in the Human
22 Services Department Act, exercise general supervisory and
23 appointing authority over all department employees, subject to
24 any applicable personnel laws and regulations;

25 (2) delegate authority to subordinates as he

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1 deems necessary and appropriate, clearly delineating such
2 delegated authority and the limitations thereto;

3 (3) organize the department into those
4 organizational units he deems will enable it to function most
5 efficiently, subject to any provisions of law requiring or
6 establishing specific organizational units;

7 (4) within the limitations of available
8 appropriations and applicable laws, employ and fix the
9 compensation of those persons necessary to discharge his
10 duties;

11 (5) take administrative action by issuing
12 orders and instructions, not inconsistent with the law, to
13 assure implementation of and compliance with the provisions of
14 law for whose administration or execution he is responsible
15 and to enforce those orders and instructions by appropriate
16 administrative action in the courts;

17 (6) conduct research and studies that will
18 improve the operations of the department and the provision of
19 services to the citizens of the state;

20 (7) provide courses of instruction and
21 practical training for employees of the department and other
22 persons involved in the administration of programs with the
23 objective of improving the operations and efficiency of
24 administration;

25 (8) prepare an annual budget of the

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1 department;

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

4 (a) minimize or eliminate duplication
5 of services and jurisdictional conflicts;

6 (b) coordinate activities and resolve
7 problems of mutual concern; and

8 (c) resolve by agreement the manner and
9 extent to which the department shall provide budgeting,
10 recordkeeping and related clerical assistance to
11 administratively attached agencies;

12 (10) appoint, with the governor's consent, a
13 "director" for each division. These appointed positions are
14 exempt from the provisions of the Personnel Act. Persons
15 appointed to these positions shall serve at the pleasure of
16 the secretary, except as provided in Section 9-8-9 NMSA 1978;

17 (11) give bond in the penal sum of twenty-
18 five thousand dollars (\$25,000) and require directors to each
19 give bond in the penal sum of ten thousand dollars (\$10,000)
20 conditioned upon the faithful performance of duties as
21 provided in the Surety Bond Act. The department shall pay the
22 costs of these bonds; and

23 (12) require performance bonds of such
24 department employees and officers as he deems necessary as
25 provided in the Surety Bond Act. The department shall pay the

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1 costs of these bonds.

2 C. The secretary may appoint and commission
3 investigators needed to enforce the provisions of all laws
4 administered by the department. The investigators shall have
5 all the powers and duties of peace officers.

6 [~~C-~~] D. The secretary may apply for and receive,
7 with the governor's approval, in the name of the department,
8 any public or private funds, including but not limited to
9 United States government funds, available to the department to
10 carry out its programs, duties or services.

11 [~~D-~~] E. Where functions of departments overlap or
12 a function assigned to one department could better be
13 performed by another department, the secretary may recommend
14 appropriate legislation to the next session of the legislature
15 for its approval.

16 [~~E-~~] F. The secretary may make and adopt such
17 reasonable and procedural rules [~~and regulations~~] as may be
18 necessary to carry out the duties of the department and its
19 divisions. No rule [~~or regulation~~] promulgated by the
20 director of any division in carrying out the functions and
21 duties of the division shall be effective until approved by
22 the secretary unless otherwise provided by statute. Unless
23 otherwise provided by statute, no [~~regulation~~] rule affecting
24 any person or agency outside the department shall be adopted,
25 amended or repealed without a public hearing on the proposed

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1 action before the secretary or a hearing officer designated by
2 him. The public hearing shall be held in Santa Fe unless
3 otherwise permitted by statute. Notice of the subject matter
4 of the [~~regulation~~] rule, the action proposed to be taken, the
5 time and place of the hearing, the manner in which interested
6 persons may present their views and the method by which copies
7 of the proposed [~~regulation~~] rule, proposed amendment or
8 repeal of an existing [~~regulation~~] rule may be obtained shall
9 be published once at least thirty days prior to the hearing
10 date in a newspaper of general circulation and mailed at least
11 thirty days prior to the hearing date to all persons who have
12 made a written request for advance notice of hearing.

13 [~~F.~~] G. In the event the secretary anticipates
14 that adoption, amendment or repeal of a rule [~~or regulation~~]
15 will be required by a cancellation, reduction or suspension of
16 federal funds or order by a court of competent jurisdiction:

17 (1) if the secretary is notified by
18 appropriate federal authorities at least sixty days prior to
19 the effective date of such cancellation, reduction or
20 termination of federal funds, the department is required to
21 promulgate [~~regulations~~] rules through the public hearing
22 process to be effective on the date mandated by the
23 appropriate federal authority; or

24 (2) if the secretary is notified by
25 appropriate federal authorities or court less than sixty days

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1 prior to the effective date of such cancellation, reduction or
2 suspension of federal funds or court order, the department is
3 authorized without a public hearing to promulgate interim
4 rules [~~or regulations~~] effective for a period not to exceed
5 ninety days. [~~Such~~] Interim [~~regulations~~] rules shall not be
6 promulgated without first providing a written notice twenty
7 days in advance to providers of medical services and
8 beneficiaries of department programs. At the time of the
9 promulgation of the interim rules [~~or regulations~~], the
10 department shall give notice of the public hearing on the
11 final rules [~~or regulations~~] in accordance with Subsection [~~E~~]
12 F of this section.

13 [~~G.~~] H. If the secretary certifies to the
14 secretary of finance and administration and gives
15 contemporaneous notice of such certification through the human
16 services register that the department has insufficient state
17 funds to operate any of the programs it administers and that
18 reductions in services or benefit levels are necessary, the
19 secretary may engage in interim rulemaking. Notwithstanding
20 any provision to the contrary in the State Rules Act, interim
21 rulemaking shall be conducted pursuant to Subsection [~~E~~] F of
22 this section, except:

- 23 (1) the period of notice of public hearing
24 shall be fifteen days;
- 25 (2) the department shall also send individual

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1 notices of the interim rulemaking and of the public hearing to
2 affected providers and beneficiaries;

3 (3) rules [~~and regulations~~] promulgated
4 [~~under~~] pursuant to the provisions of this subsection shall be
5 in effect not less than five days after the public hearing;

6 (4) rules [~~and regulations~~] promulgated
7 [~~under~~] pursuant to the provisions of this subsection shall
8 not be in effect for more than ninety days; and

9 (5) if final rules [~~and regulations~~] are
10 necessary to replace the interim rules [~~and regulations~~], the
11 department shall give notice of intent to promulgate final
12 rules [~~and regulations~~] at the time of notice herein. The
13 final rules [~~and regulations~~] shall be promulgated not more
14 than forty-five days after the public hearing and filed in
15 accordance with the State Rules Act.

16 I. At the time of the promulgation of the interim
17 rules [~~or regulations~~], the department shall give notice of
18 the public hearing on the final rules [~~or regulations~~] in
19 accordance with Subsection [~~E~~] F of this section.

20 [~~H.~~] J. All rules [~~and regulations~~] shall be filed
21 in accordance with the State Rules Act. "

22 Section 3. EFFECTIVE DATE. --The effective date of the
23 provisions of this act is July 1, 1999.

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3
4
5
6 February 10, 1999

7
8 Mr. Speaker:

9
10 Your JUDICIARY COMMITTEE, to whom has been referred

11
12 HOUSE BILL 99

13
14 has had it under consideration and reports same with
15 recommendation that it DO NOT PASS, but that

16 HOUSE JUDICIARY COMMITTEE SUBSTITUTE
17 FOR HOUSE BILL 99

18
19 DO PASS, and thence referred to the APPROPRIATIONS AND
20 FINANCE COMMITTEE.

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Respectfully submitted,

R. David Pederson, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Luna, Rios

Absent: None

J:\99BillsWP\H0099

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 99

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

AN ACT

RELATING TO LAW ENFORCEMENT; PROVIDING THE SECRETARY OF HUMAN SERVICES WITH AUTHORITY TO APPOINT INVESTIGATORS VESTED WITH THE POWER NEEDED TO ENFORCE LAWS ADMINISTERED BY THE DEPARTMENT; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 9-8-6 NMSA 1978 (being Laws 1977, Chapter 252, Section 7, as amended) is amended to read:

"9-8-6. SECRETARY--DUTIES AND GENERAL POWERS. --

A. The secretary is responsible to the governor for the operation of the department. It is his duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his 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.

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In accordance with these provisions, the secretary shall:

1 (1) except as otherwise provided in the Human
2 Services Department Act, 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 he
6 deems necessary and appropriate, clearly delineating such
7 delegated authority and the limitations thereto;

8 (3) organize the department into those
9 organizational units he deems will enable it to function most
10 efficiently, subject to any provisions of law requiring or
11 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 his
15 duties;

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

25 (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;

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

3 (a) minimize or eliminate duplication of
4 services and jurisdictional conflicts;

5 (b) coordinate activities and resolve
6 problems of mutual concern; and

7 (c) resolve by agreement the manner and
8 extent to which the department shall provide budgeting,
9 recordkeeping and related clerical assistance to administratively
10 attached agencies;

11 (10) appoint, with the governor's consent, a
12 "director" for each division. These appointed positions are
13 exempt from the provisions of the Personnel Act. Persons
14 appointed to these positions shall serve at the pleasure of the
15 secretary, except as provided in Section 9-8-9 NMSA 1978;

16 (11) give bond in the penal sum of twenty-five
17 thousand dollars (\$25,000) and require directors to each give
18 bond in the penal sum of ten thousand dollars (\$10,000)
19 conditioned upon the faithful performance of duties as provided
20 in the Surety Bond Act. The department shall pay the costs of
21 these bonds; and

22 (12) require performance bonds of such
23 department employees and officers as he deems necessary as
24 provided in the Surety Bond Act. The department shall pay the
25 costs of these bonds.

26 C. The secretary may appoint and commission
27 investigators needed to enforce the provisions of all laws
28 administered by the department. The investigators shall have all

1 the powers and duties needed to enforce the provisions of all
 2 laws administered by the department, after they complete the
 3 training and certification requirements set forth in the Law
 4 Enforcement Training Act.

5 [~~E.~~] D. The secretary may apply for and receive, with
 6 the governor's approval, in the name of the department, any
 7 public or private funds, including but not limited to United
 8 States government funds, available to the department to carry out
 9 its programs, duties or services.

10 [~~D.~~] E. Where functions of departments overlap or a
 11 function assigned to one department could better be performed by
 12 another department, the secretary may recommend appropriate
 13 legislation to the next session of the legislature for its
 14 approval.

15 [~~E.~~] F. The secretary may make and adopt such
 16 reasonable and procedural rules [~~and regulations~~] as may be
 17 necessary to carry out the duties of the department and its
 18 divisions. No rule [~~or regulation~~] promulgated by the director
 19 of any division in carrying out the functions and duties of the
 20 division shall be effective until approved by the secretary
 21 unless otherwise provided by statute. Unless otherwise provided
 22 by statute, no [~~regulation~~] rule affecting any person or agency
 23 outside the department shall be adopted, amended or repealed
 24 without a public hearing on the proposed action before the
 25 secretary or a hearing officer designated by him. The public
 hearing shall be held in Santa Fe unless otherwise permitted by
 statute. Notice of the subject matter of the [~~regulation~~] rule,
 the action proposed to be taken, the time and place of the

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

9 [F.] G. In the event the secretary anticipates that
10 adoption, amendment or repeal of a rule [~~or regulation~~] will be
11 required by a cancellation, reduction or suspension of federal
12 funds or order by a court of competent jurisdiction:

13 (1) if the secretary is notified by appropriate
14 federal authorities at least sixty days prior to the effective
15 date of such cancellation, reduction or termination of federal
16 funds, the department is required to promulgate [~~regulations~~]
17 rules through the public hearing process to be effective on the
18 date mandated by the appropriate federal authority; or

19 (2) if the secretary is notified by appropriate
20 federal authorities or court less than sixty days prior to the
21 effective date of such cancellation, reduction or suspension of
22 federal funds or court order, the department is authorized
23 without a public hearing to promulgate interim rules [~~or~~
24 ~~regulations~~] effective for a period not to exceed ninety days.

25 [Such] Interim [~~regulations~~] rules shall not be promulgated
without first providing a written notice twenty days in advance
to providers of medical services and beneficiaries of department
programs. At the time of the promulgation of the interim rules

1 ~~[or regulations]~~, the department shall give notice of the public
 2 hearing on the final rules ~~[or regulations]~~ in accordance with
 3 Subsection ~~[E]~~ F of this section.

4 ~~[G.]~~ H. If the secretary certifies to the secretary
 5 of finance and administration and gives contemporaneous notice of
 6 such certification through the human services register that the
 7 department has insufficient state funds to operate any of the
 8 programs it administers and that reductions in services or
 9 benefit levels are necessary, the secretary may engage in interim
 10 rulemaking. Notwithstanding any provision to the contrary in the
 11 State Rules Act, interim rulemaking shall be conducted pursuant
 12 to Subsection ~~[E]~~ F of this section, except:

13 (1) the period of notice of public hearing
 14 shall be fifteen days;

15 (2) the department shall also send individual
 16 notices of the interim rulemaking and of the public hearing to
 17 affected providers and beneficiaries;

18 (3) rules ~~[and regulations]~~ promulgated ~~[under]~~
 19 pursuant to the provisions of this subsection shall be in effect
 20 not less than five days after the public hearing;

21 (4) rules ~~[and regulations]~~ promulgated ~~[under]~~
 22 pursuant to the provisions of this subsection shall not be in
 23 effect for more than ninety days; and

24 (5) if final rules ~~[and regulations]~~ are
 25 necessary to replace the interim rules ~~[and regulations]~~, the
 department shall give notice of intent to promulgate final rules
~~[and regulations]~~ at the time of notice herein. The final rules
~~[and regulations]~~ shall be promulgated not more than forty-five

1 days after the public hearing and filed in accordance with the
2 State Rules Act.

3 I. At the time of the promulgation of the interim
4 rules [~~or regulations~~], the department shall give notice of the
5 public hearing on the final rules [~~or regulations~~] in accordance
6 with Subsection [E] F of this section.

7 [~~H.~~] J. All rules [~~and regulations~~] shall be filed in
8 accordance with the State Rules Act. "

9 Section 2. EFFECTIVE DATE. --The effective date of the
10 provisions of this act is July 1, 1999.

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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5 February 15, 1999
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7 Mr. Speaker:
8

9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to whom
10 has been referred

11 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
12 HOUSE BILL 99
13

14 has had it under consideration and reports same with
15 recommendation that it DO PASS.
16

17 Respectfully submitted,
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21 _____
22 Max Coll, Chairman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJC/HB 99

Page 20

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

Date _____

The roll call vote was 11 For 5 Against

Yes: 11

No: Buffett, Parsons, Pearce, Townsend, Wallace

Excused: Abeyta

Absent: None

J: \99BillsWP\H0099

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FORTY- FOURTH LEGISLATURE
FIRST SESSION

February 16, 1999

HOUSE FLOOR AMENDMENT number _____ to HOUSE JUDICIARY COMMITTEE
SUBSTITUTE FOR HOUSE BILL 99

Amendment sponsored by Representative Miguel P. Garcia

1. On page 4, line 12, strike "all".
 2. On page 4, line 13, strike "all".
-

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FORTY-FOURTH LEGISLATURE
FIRST SESSION

HJC/HB 99

HF1/HB 99

Page 22

Miguel P. Garcia

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

Date _____

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