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HOUSE BILL 207

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

INTRODUCED BY

James Roger madalena

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO JOINT POWERS AGREEMENTS; AUTHORIZING PUBLIC AGENCIES TO ENTER INTO JOINT POWERS AGREEMENTS WITH INDIAN NATIONS, TRIBES OR PUEBLOS TO COORDINATE AND FACILITATE JOINT PROVISION OF GOVERNMENTAL SERVICES; DECLARING AN EMERGENCY.

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

Section 1. Section 3-18-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-17-1, as amended) is amended to read:

"3-18-1. GENERAL POWERS-- BODY POLITIC AND CORPORATE POWERS. --A municipality is a body politic and corporate under the name and form of government selected by its qualified electors. A municipality may:

- A. sue or be sued;
- B. enter into contracts or leases;
- C. acquire and hold property, both real and

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- 1 personal;
- 2 D. have a common seal [~~which~~] that may be altered
- 3 at pleasure;
- 4 E. exercise such other privileges that are
- 5 incident to corporations of like character or degree that are
- 6 not inconsistent with the laws of New Mexico;
- 7 F. protect generally the property of its
- 8 municipality and its inhabitants;
- 9 G. preserve peace and order within the
- 10 municipality; [~~and~~]
- 11 H. establish rates for services provided by
- 12 municipal utilities and revenue-producing projects, including
- 13 amounts [~~which~~] that the governing body determines to be
- 14 reasonable and consistent with amounts received by private
- 15 enterprise in the operation of similar facilities; and
- 16 I. enter into agreements with Indian nations,
- 17 tribes or pueblos located within or adjacent to the
- 18 municipality pursuant to the Joint Powers Agreements Act to
- 19 further coordinate services to provide for public health,
- 20 welfare and safety, unless otherwise explicitly restricted by
- 21 statute. Nothing in this subsection is intended to expand the
- 22 existing jurisdiction of the state or its political
- 23 subdivisions. "

24 Section 2. Section 9-1-5 NMSA 1978 (being Laws 1977,
25 Chapter 248, Section 5) is amended to read:

. 125170. 1

1 "9-1-5. SECRETARY-- DUTIES AND GENERAL POWERS. --

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

6 B. To perform his duties, the secretary has every
7 power expressly enumerated in the laws, whether granted to the
8 secretary or the department or any division of the department,
9 except where authority conferred upon any division [~~therein~~]
10 is explicitly exempted from the secretary's authority by
11 statute. In accordance with these provisions, the secretary
12 shall:

13 (1) except as otherwise provided in [~~this~~]
14 the Executive Reorganization Act, exercise general supervisory
15 and appointing authority over all department employees,
16 subject to any applicable personnel laws and [~~regulations~~]
17 rules;

18 (2) delegate authority to subordinates as he
19 deems necessary and appropriate, clearly delineating [~~such~~]
20 the delegated authority and the limitations thereto;

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

25 (4) within the limitations of available

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1 appropriations and applicable laws, employ and fix the
2 compensation of those persons necessary to discharge his
3 duties;

4 (5) take administrative action by issuing
5 orders and instructions, [~~not inconsistent~~] consistent with
6 the law, to assure implementation of and compliance with the
7 provisions of law [~~with the administration or execution of~~
8 ~~which he is responsible~~] that are his responsibility to
9 administer and execute and to enforce those orders and
10 instructions by appropriate administrative action or actions
11 in the courts;

12 (6) conduct research and studies that will
13 improve the operations of the department and the provision of
14 services to the citizens of the state;

15 (7) provide courses of instruction and
16 practical training for employees of the department and other
17 persons involved in the administration of programs with the
18 objective of improving the operations and efficiency of
19 administration;

20 (8) prepare an annual budget of the
21 department;

22 (9) provide cooperation, at the request of
23 heads of administratively attached agencies and adjunct
24 agencies, in order to:

25 (a) minimize or eliminate duplication

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1 of services and jurisdictional conflicts;

2 (b) coordinate activities and resolve
3 problems of mutual concern; and

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

8 (10) appoint, with the governor's consent, a
9 "director" for each division [~~a "director"~~]. These appointed
10 positions are exempt from the provisions of the Personnel Act.
11 Persons appointed to these positions shall serve at the
12 pleasure of the secretary;

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

19 (12) require performance bonds of [~~such~~]
20 those department employees and officers as he deems necessary,
21 as provided in the Surety Bond Act. The department shall pay
22 the costs of [~~such~~] those bonds.

23 C. The secretary may apply for and receive, with
24 the governor's approval, in the name of the department any
25 public or private funds, including but not limited to United

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1 States government funds, available to the department to carry
2 out its programs, duties or services.

3 D. Where functions of departments overlap or a
4 function assigned to one department could better be performed
5 by another department, a secretary may recommend appropriate
6 legislation to the next session of the legislature for its
7 approval.

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

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1 be published once at least thirty days prior to the hearing
2 date in a newspaper of general circulation and mailed at least
3 thirty days prior to the hearing date to all persons who have
4 made a written request for advance notice of hearing. All
5 rules [~~and regulations~~] shall be filed in accordance with the
6 State Rules Act.

7 F. To further the administration and enforcement
8 of a law for which the secretary or the department is charged
9 by specific statute, and in the absence of explicit statutory
10 directive to the contrary, the secretary or his designated
11 representative is authorized to enter into agreements with
12 Indian nations, tribes or pueblos pursuant to the Joint Powers
13 Agreements Act. Nothing in this subsection is intended to
14 expand the existing jurisdiction of the state or its political
15 subdivisions.

16 [~~F.~~] G. If this section conflicts with the powers
17 and duties specifically given by statute to a particular
18 secretary, the specific powers and duties shall control. If
19 this section conflicts with other statutes specifically
20 limiting the powers of a secretary, the specific limitations
21 shall control."

22 Section 3. Section 11-1-4 NMSA 1978 (being Laws 1961,
23 Chapter 135, Section 4) is amended to read:

24 "11-1-4. TERMS AND CONDITIONS OF JOINT AGREEMENTS. --

25 A. Every agreement executed by one or more public

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1 agencies shall clearly specify the purpose of the agreement or
2 for any power [~~which~~] that is to be exercised. The agreement
3 shall provide for the method by which the purpose will be
4 accomplished and the manner in which any power will be
5 exercised [~~under such~~] pursuant to the agreement.

6 B. The parties to the agreement may provide
7 [~~therein~~] in the agreement that:

8 (1) contributions from the funds of the
9 public agencies may be made for the purpose set forth in the
10 agreements; [~~or~~]

11 (2) payments of public funds may be made to
12 defray the cost of [~~such~~] the agreements; or

13 (3) advances of public funds of the public
14 agencies be made for the purpose set forth in the agreement
15 and that [~~such~~] the advances be repaid as provided in [~~such~~]
16 the agreement.

17 C. The agreement may provide that funds be paid to
18 and disbursed by the agency agreed upon by the public agencies
19 under the terms of the agreement.

20 D. The agreement shall provide for strict
21 accountability of all receipts and disbursements.

22 E. The agreement may be continued for a definite
23 term or until rescinded or terminated and may provide for the
24 method by which it may be rescinded or terminated by any
25 party.

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1 F. The agreement shall provide for the
2 disposition, division or distribution of any property acquired
3 as the result of the joint exercise of powers and shall
4 further provide that after the completion of the agreement's
5 purpose any surplus money on hand shall be returned in
6 proportion to the contributions made.

7 G. If the purpose set forth in the agreement is
8 the acquisition, construction or operation of a revenue-
9 producing facility, the agreement may provide for:

10 (1) [~~for~~] the repayment or return to the
11 parties of all or any part of any contributions, payments or
12 advancements made by the parties pursuant to [~~such~~] the
13 agreements; and

14 (2) [~~for~~] payment to the parties of any sum
15 derived from the revenues of [~~such~~] those facilities.

16 H. Payments, repayments or returns to a public
17 agency shall be made at the time and in the manner specified
18 in the agreement.

19 I. Joint powers agreements to provide governmental
20 services funded by state appropriations entered into between
21 public agencies and Indian nations, tribes or pueblos or
22 organizations created by one or more Indian nations, tribes or
23 pueblos are not subject to the provisions of the Procurement
24 Code. "

25 Section 4. EMERGENCY.--It is necessary for the public

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1 peace, health and safety that this act take effect
2 immediately.

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 February 9, 1999

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8 Mr. Speaker:

9
10 Your GOVERNMENT AND URBAN AFFAIRS COMMITTEE, to
11 whom has been referred

12
13 HOUSE BILL 207

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

17 1. On page 9, line 22, strike "created" and insert in
18 lieu thereof "owned and controlled".,

19
20 and thence referred to the JUDICIARY COMMITTEE.
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HGUAC/HB 207

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Respectfully submitted,

James G. Taylor, Chairman

Adopted _____

(Chief Clerk)

Not Adopted _____

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: None

Absent: None

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