

1 HOUSE BILL 484

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

3 INTRODUCED BY

4 Paul C. Bandy

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10 AN ACT

11 RELATING TO STATE AGENCIES; AMENDING A SECTION OF THE EXECUTIVE
12 REORGANIZATION ACT TO REQUIRE COORDINATION OF STATE AGENCY
13 BOARDS AND COMMISSIONS WITH THE POLITICAL SUBDIVISIONS OF THE
14 STATE.

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

17 SECTION 1. Section 9-1-5 NMSA 1978 (being Laws 1977,
18 Chapter 248, Section 5) is amended to read:

19 "9-1-5. SECRETARY--DUTIES AND GENERAL POWERS.--

20 A. The secretary is responsible to the governor for
21 the operation of the department. It is [~~his~~] the secretary's
22 duty to manage all operations of the department and to
23 administer and enforce the laws with which [~~he~~] the secretary
24 or the department is charged.

25 B. To perform [~~his~~] the secretary's duties, the

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1 secretary has every power expressly enumerated in the laws,
2 whether granted to the secretary or the department or any
3 division of the department, except where authority conferred
4 upon any division [~~therein~~] is explicitly exempted from the
5 secretary's authority by statute. In accordance with these
6 provisions, the secretary shall:

7 (1) except as otherwise provided in [~~this~~] the
8 Executive Reorganization Act, exercise general supervisory and
9 appointing authority over all department employees, subject to
10 any applicable personnel laws and regulations;

11 (2) delegate authority to subordinates as [~~he~~]
12 the secretary deems necessary and appropriate, clearly
13 delineating such delegated authority and the limitations
14 thereto;

15 (3) organize the department into those
16 organizational units [~~he~~] the secretary deems will enable it to
17 function most efficiently, subject to any provisions of law
18 requiring or establishing specific organizational units;

19 (4) within the limitations of available
20 appropriations and applicable laws, employ and fix the
21 compensation of those persons necessary to discharge [~~his~~] the
22 secretary's duties;

23 (5) take administrative action by issuing
24 orders and instructions, not inconsistent with the law, to
25 assure implementation of and compliance with the provisions of

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1 law ~~[with the]~~ for whose administration or execution ~~[of which~~
2 ~~he]~~ the secretary is responsible and to enforce those orders
3 and instructions by appropriate administrative action or
4 actions in the courts;

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

8 (7) provide courses of instruction and
9 practical training for employees of the department and other
10 persons involved in the administration of programs with the
11 objective of improving the operations and efficiency of
12 administration;

13 (8) prepare an annual budget of the
14 department;

15 (9) provide cooperation, at the request of
16 heads of administratively attached agencies and adjunct
17 agencies, in order to:

18 (a) minimize or eliminate duplication of
19 services and jurisdictional conflicts;

20 (b) coordinate activities and resolve
21 problems of mutual concern; and

22 (c) resolve by agreement the manner and
23 extent to which the department shall provide budgeting,
24 recordkeeping and related clerical assistance to
25 administratively attached agencies;

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

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

12 (12) require performance bonds of such
13 department employees and officers as [~~he~~] the secretary deems
14 necessary, as provided in the Surety Bond Act. The department
15 shall pay the costs of [~~such~~] these bonds;

16 (13) keep apprised of the state's political
17 subdivisions' plans, policies and programs and assure that,
18 when practicable and consistent with state law, there is
19 consistency with their plans when developing rules, plans,
20 policies or management actions, providing the state's political
21 subdivisions have provided their plans and policies to the
22 agencies;

23 (14) provide early notification to the state's
24 political subdivisions of the development of any rule, plan,
25 policy or action to those political subdivisions that have

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1 requested notification;

2 (15) provide the opportunity for meaningful
3 input by the state's political subdivisions to the development
4 of any state agency, board or commission rule, plan, policy or
5 action that will or may affect the political subdivisions, the
6 natural resources within their jurisdictions or their
7 residents;

8 (16) make all practical efforts, in good
9 faith, to resolve conflicts at the lowest level possible
10 between state agencies, boards or commissions and the state's
11 political subdivisions' policies and plans and, where
12 practicable and consistent with state law, reach consistency
13 with those plans and policies through coordination; and

14 (17) develop procedures for coordination with
15 and provide for meaningful input by the state's political
16 subdivisions regarding the merits of each rule, plan, action or
17 proposal developed by the state's agencies, boards or
18 commissions.

19 C. The secretary may apply for and receive, with
20 the governor's approval, in the name of the department any
21 public or private funds, including but not limited to United
22 States government funds, available to the department to carry
23 out its programs, duties or services.

24 D. Where functions of departments overlap or a
25 function assigned to one department could better be performed

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1 by another department, a secretary may recommend appropriate
2 legislation to the next session of the legislature for its
3 approval.

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

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1 rules ~~[and regulations]~~ shall be filed in accordance with the
2 State Rules Act.

3 F. If this section conflicts with the powers and
4 duties specifically given by statute to a particular secretary,
5 the specific powers and duties shall control. If this section
6 conflicts with other statutes specifically limiting the powers
7 of a secretary, the specific limitations shall control."

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