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HOUSE BILL 508

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

INTRODUCED BY

Joni Marie Gutierrez

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; REPLACING THE LOCAL
GOVERNMENT DIVISION OF THE DEPARTMENT OF FINANCE AND
ADMINISTRATION WITH THE PLANNING AND COMMUNITY DEVELOPMENT
DIVISION OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION;
TRANSFERRING FUNCTIONS, PERSONNEL, APPROPRIATIONS, MONEY,
PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES.

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

SECTION 1. Section 9-6-1 NMSA 1978 (being Laws 1977,
Chapter 247, Section 1) is amended to read:
"9-6-1. SHORT TITLE.--Sections [~~1 through 7 of this act~~]
9-6-1 through 9-6-5.1 and 9-6-15 NMSA 1978 may be cited as the
"Department of Finance and Administration Act"."

SECTION 2. Section 9-6-3 NMSA 1978 (being Laws 1977,
Chapter 247, Section 3, as amended) is amended to read:

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1 "9-6-3. DEPARTMENT OF FINANCE AND ADMINISTRATION--
2 CREATION--TRANSFER AND MERGER OF DIVISION FUNCTIONS--MERGER AND
3 CREATION OF DIVISIONS.--

4 A. The "department of finance and administration"
5 is created. The department shall consist of those divisions
6 created by law or executive order, as modified by executive
7 order pursuant to Subsection C of this section, including but
8 not limited to:

9 (1) the board of finance division;

10 (2) the financial control division;

11 (3) the [~~local government~~] planning and
12 community development division;

13 (4) the management and contracts review
14 division; and

15 (5) the state budget division.

16 B. The secretary of finance and administration is
17 empowered to organize the department and the divisions thereof
18 specified in Subsection A of this section and may transfer or
19 merge functions between divisions in the interest of efficiency
20 and economy.

21 C. The governor is empowered to merge divisions of
22 the department or to create additional divisions by executive
23 order in the interest of efficiency and economy."

24 SECTION 3. Section 9-6-5 NMSA 1978 (being Laws 1977,
25 Chapter 247, Section 5, as amended) is amended to read:

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1 "9-6-5. SECRETARY--DUTIES AND GENERAL POWERS.--

2 A. The secretary of finance and administration is
3 responsible to the governor for the operation of the
4 department. It is [~~his~~] the secretary's duty to manage all
5 operations of the department and to administer and enforce the
6 laws with which [~~he~~] the secretary or the department is
7 charged.

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

15 (1) except as otherwise provided in the
16 Department of Finance and Administration Act, exercise general
17 supervisory and appointing authority over all department
18 employees, subject to any applicable personnel laws and
19 regulations;

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

24 (3) organize the department into those
25 organizational units [~~he~~] that the secretary deems will enable

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1 it to function most efficiently, subject to any provisions of
2 law requiring or establishing specific organizational units;

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

7 (5) take administrative action by issuing
8 orders and instructions, not inconsistent with the law, to
9 assure implementation of and compliance with the provisions of
10 law with the administration or execution of which [~~he~~] the
11 secretary is responsible, and to enforce those orders and
12 instructions by appropriate administrative action or actions in
13 the courts;

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

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

22 (8) prepare an annual budget of the
23 department;

24 (9) provide cooperation, at the request of
25 heads of administratively attached agencies and adjunct

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1 agencies in order to:

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

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

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

10 (10) appoint, with the governor's consent, one
11 "deputy secretary", and, for each division and office, a
12 "director". These appointed positions are exempt from the
13 provisions of the Personnel Act. Any person appointed to serve
14 as the director of the planning and community development
15 division shall have a minimum of four years of city, county,
16 regional or state planning experience, shall be a member of the
17 American institute of certified planners and shall have resided
18 in the state for at least one year. Persons appointed to these
19 positions shall serve at the pleasure of the secretary;

20 (11) serve as, or designate the deputy
21 secretary to serve as, executive officer of the state board of
22 finance;

23 (12) give bond as provided in the Surety Bond
24 Act. The department shall pay the cost of such bond; and

25 (13) require faithful performance or other

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1 fidelity bonds of such department employees and officers as
2 [he] the secretary deems necessary, as provided in the Surety
3 Bond Act. The department shall pay the costs of such bonds.

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

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

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

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

13 SECTION 4. Section 9-6-5.1 NMSA 1978 (being Laws 1983,
14 Chapter 296, Section 7) is amended to read:

15 "9-6-5.1. PLANNING POWERS AND DUTIES OF SECRETARY OF
16 FINANCE AND ADMINISTRATION.--The secretary of [~~the department~~
17 ~~of~~] finance and administration, in addition to the other powers
18 and duties conferred:

19 A. shall review federal grant applications and
20 provide management assistance;

21 B. shall coordinate, in accordance with directives
22 from the governor's office of policy and planning, state agency
23 plans for economic, natural resource, energy resource and human
24 resource development;

25 C. shall direct the planning and community

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1 development division to:

2 (1) provide aid to planning and development
3 districts in developing grant proposals and cooperate with
4 other local entities in developing grant proposals;

5 (2) acquire, study and review all plans for
6 capital projects proposed by state agencies and render advice
7 on the plans and strategies for funding implementation;

8 (3) maintain an inventory of and long-range
9 estimates for plans for capital projects and develop standards
10 for measuring the need for and the utility of proposed
11 projects, including cost, function, location and relevancy to
12 community plans and local priorities;

13 (4) provide community development block grant
14 technical assistance and administer, in consultation with and
15 upon advice and direction from the community development
16 council, the program for the state community development block
17 grant program;

18 (5) serve as staff to the New Mexico
19 association of regional councils;

20 (6) serve as staff to the acequia commission;

21 (7) maintain a state planning library, census
22 information and digital planning information, all of which
23 shall be available to the public;

24 (8) provide planning assistance to county and
25 multicounty districts relative to applications by such

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1 districts for financial assistance and for regional planning
2 development;

3 (9) develop a state comprehensive growth
4 management plan that provides planning for development in areas
5 of key interest to the state, including:

6 (a) protection and development of the
7 state's natural resources such as water and other minerals;

8 (b) development of major infrastructure
9 for transportation and economic development;

10 (c) assurance of affordable housing and
11 renewable energy; and

12 (d) protection of land resources for
13 agriculture and protection of cultural resources;

14 (10) coordinate the state growth management
15 planning process with the cooperation of other relevant state
16 agencies to assure that community development is in the
17 interest of promoting the safety and general welfare of the
18 residents of the state;

19 (11) involve the public in its programs and
20 initiatives, including, from time to time, use of ad hoc
21 citizen task forces or advisory committees to study and advise
22 on selected problems of interest to the state;

23 (12) coordinate the state clearinghouse review
24 process;

25 (13) confer with the state budget division of

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1 the department of finance and administration in developing
2 comprehensive plans to assure coordination of planning and
3 budgeting functions;

4 (14) provide planning and funding assistance
5 to units of local government, council of government
6 organizations, Indian tribal governments situated within New
7 Mexico and nonprofit entities having for their purpose local,
8 regional or community betterment. The secretary of finance and
9 administration, incident to any such programs, may enter into
10 contracts and agreements with such units of local government,
11 council of government organizations, Indian tribal governments,
12 nonprofit entities and the federal government and may
13 participate in or receive aid from any federal or private
14 program in relation to such a planning program or assistance;

15 (15) develop a statewide comprehensive
16 geographic information system;

17 (16) propose updates to the legislature for
18 changes to the statutes governing planning, zoning and
19 subdivision;

20 (17) involve the public in its programs and
21 initiatives;

22 (18) submit annual reports for review and
23 comment to the governor and the appropriate interim committees
24 of the legislature regarding community planning and development
25 activities and accomplishments;

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1 (19) contract for, receive and utilize any
2 grants or other financial assistance made available by the
3 United States government or by any other source, public or
4 private; and

5 (20) review and coordinate comment by state
6 agencies on draft environmental impact statements; and

7 ~~[D. shall acquire, study and review all plans for~~
8 ~~capital projects proposed by state agencies and render advice~~
9 ~~on the plans. The secretary shall maintain long-range~~
10 ~~estimates and plans for capital projects and develop standards~~
11 ~~for measuring the need for and utility of proposed projects;~~

12 ~~E. may contract for, receive and utilize any grants~~
13 ~~or other financial assistance made available by the United~~
14 ~~States government or by any other source, public or private;~~

15 ~~F. may provide planning and funding assistance to~~
16 ~~units of local government, council of government organizations,~~
17 ~~Indian tribal governments situated within New Mexico and to~~
18 ~~nonprofit entities having for their purpose local, regional or~~
19 ~~community betterment. The secretary, incident to any such~~
20 ~~programs, may enter into contracts and agreements with such~~
21 ~~units of local government, council of government organizations,~~
22 ~~Indian tribal governments, nonprofit entities and the federal~~
23 ~~government and may participate in or receive aid from any~~
24 ~~federal or private program in relation to such a planning~~
25 ~~program or assistance;~~

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1 ~~G. shall confer with the state budget division of~~
2 ~~the department of finance and administration in developing~~
3 ~~comprehensive plans to assure coordination of planning and~~
4 ~~budgeting functions;~~

5 ~~H. shall coordinate the state clearinghouse review~~
6 ~~process;~~

7 ~~I.] D. shall develop a status of the state report~~
8 ~~[J. shall review and coordinate comment by state~~
9 ~~agencies on draft environmental impact statements;~~

10 ~~K. shall provide community development block grant~~
11 ~~technical assistance to local governments;~~

12 ~~L. shall administer, in consultation with and upon~~
13 ~~advice and direction from the community development block grant~~
14 ~~policy committee, the program for the state community~~
15 ~~development block grant program;~~

16 ~~M. shall serve as staff to the New Mexico~~
17 ~~association of regional councils;~~

18 ~~N. shall maintain a state planning library; and~~

19 ~~O. shall provide planning assistance to county and~~
20 ~~multi-county districts relative to application by such~~
21 ~~districts for financial assistance and for regional plan~~
22 ~~development]."~~

23 SECTION 5. TEMPORARY PROVISION--TRANSFERS--CONTRACTUAL
24 OBLIGATIONS--STATUTORY REFERENCES.--

25 A. On January 1, 2012, all functions, personnel,

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1 appropriations, money, records, furniture, equipment and other
2 property of the local government division of the department of
3 finance and administration shall be transferred to the planning
4 and community development division of the department of finance
5 and administration.

6 B. On January 1, 2012, all references in law to the
7 local government division of the department of finance and
8 administration shall be deemed to be references to the planning
9 and community development division of the department of finance
10 and administration.

11 C. On January 1, 2012, all contractual obligations
12 of the local government division of the department of finance
13 and administration shall be transferred to the planning and
14 community development division of the department of finance and
15 administration.

16 D. The rules of the local government division of
17 the department of finance and administration shall remain in
18 effect until repealed or amended by the planning and community
19 development division of the department of finance and
20 administration.

21 SECTION 6. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is January 1, 2012.