

1 HOUSE BILL 231

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO INFORMATION TECHNOLOGY; TERMINATING THE INFORMATION  
12 TECHNOLOGY COMMISSION; AMENDING, REPEALING AND ENACTING  
13 SECTIONS OF THE NMSA 1978.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. [NEW MATERIAL] TERMINATION OF AGENCY

17 LIFE--DELAYED REPEAL.--The information technology commission is  
18 terminated July 1, 2017 pursuant to the provisions of the  
19 Sunset Act. The commission shall continue to operate according  
20 to the provisions of the Department of Information Technology  
21 Act until July 1, 2018. Effective July 1, 2018, Section 9-27-9  
22 NMSA 1978 (being Laws 2007, Chapter 290, Section 9, as amended)  
23 is repealed.

24 SECTION 2. Section 9-27-6 NMSA 1978 (being Laws 2007,  
25 Chapter 290, Section 6, as amended) is amended to read:

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1 "9-27-6. SECRETARY--DUTIES AND GENERAL POWERS.--

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

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

14 (1) exercise general supervisory and  
15 appointing authority over all department employees, subject to  
16 any applicable personnel laws and regulations;

17 (2) delegate authority to subordinates as the  
18 secretary deems necessary and appropriate, clearly delineating  
19 such delegated authority and the limitations thereto;

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

24 (4) within the limitations of available  
25 appropriations and applicable laws, employ and fix the

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1 compensation of those persons necessary to discharge the  
2 secretary's duties;

3 (5) take administrative action by issuing  
4 orders and instructions, not inconsistent with the law, to  
5 ensure implementation of and compliance with the provisions of  
6 law for whose administration or execution the secretary is  
7 responsible and to enforce those orders and instructions by  
8 appropriate administrative action in the courts;

9 (6) conduct research and studies that will  
10 improve the operations of the department and the provision of  
11 services to state agencies and the residents of the state;

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

17 (8) prepare an annual budget of the  
18 department;

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

21 (a) minimize or eliminate duplication of  
22 services and jurisdictional conflicts;

23 (b) coordinate activities and resolve  
24 problems of mutual concern; and

25 (c) resolve by agreement the manner and

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1 extent to which the department shall provide budgeting,  
2 [~~record-keeping~~] recordkeeping and related clerical assistance  
3 to administratively attached agencies; and

4 (10) appoint for each division a "director".  
5 These appointed positions are exempt from the provisions of the  
6 Personnel Act. Persons appointed to these positions shall  
7 serve at the pleasure of the secretary.

8 C. As the chief information officer, the secretary  
9 shall:

10 (1) review executive agency plans regarding  
11 prudent allocation of information technology resources;  
12 reduction of duplicate or redundant data, hardware and  
13 software; and improvement of system interoperability and data  
14 accessibility among agencies;

15 (2) approve executive agency information  
16 technology requests for proposals and other executive agency  
17 requests that are subject to the Procurement Code, prior to  
18 final approval;

19 (3) promulgate rules for oversight of  
20 information technology procurement;

21 (4) approve executive agency information  
22 technology contracts and amendments to those contracts,  
23 including emergency procurements, sole source contracts and  
24 price agreements, prior to approval by the department of  
25 finance and administration;

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1 (5) develop and implement procedures to  
2 standardize data elements, determine data ownership and ensure  
3 data sharing among executive agencies;

4 (6) verify compliance with state information  
5 architecture and the state information technology strategic  
6 plan before approving documents referred to in Paragraphs (2)  
7 and (4) of this subsection;

8 (7) monitor executive agency compliance with  
9 its agency plan, the state information technology strategic  
10 plan and state information architecture and report to the  
11 governor, executive agency management and the legislative  
12 finance committee on noncompliance;

13 (8) develop information technology cost  
14 recovery mechanisms and information systems rate and fee  
15 structures of state agencies and other public or private sector  
16 providers and make recommendations to the information  
17 technology rate committee;

18 (9) provide technical support to executive  
19 agencies in the development of their agency plans;

20 (10) ensure the use of existing public or  
21 private information technology or telecommunications resources  
22 when the use is practical, efficient, effective and financially  
23 prudent and is in compliance with the Procurement Code;

24 (11) review appropriation requests related to  
25 executive agency information technology requests to ensure

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1 compliance with agency plans and the state information  
2 technology strategic plan and make written recommendations by  
3 November 14 of each year to the department of finance and  
4 administration and by November 21 of each year to the  
5 legislative finance committee and the appropriate interim  
6 legislative committee [~~and the information technology~~  
7 ~~commission~~]; provided, however, that the recommendations to the  
8 legislative committees [~~and the commission~~] have been agreed to  
9 by the department of information technology and the department  
10 of finance and administration;

11 (12) promulgate rules to ensure that  
12 information technology projects satisfy criteria established by  
13 the secretary and are phased in with funding released in phases  
14 contingent upon successful completion of the prior phase;

15 (13) provide oversight of information  
16 technology projects, including ensuring adequate risk  
17 management, disaster recovery and business continuity practices  
18 and monitoring compliance with strategies [~~recommended by the~~  
19 ~~information technology commission~~] for information technology  
20 projects that affect multiple agencies;

21 (14) conduct reviews of information technology  
22 projects and provide written reports to the [~~information~~  
23 ~~technology commission and~~] appropriate legislative oversight  
24 bodies;

25 (15) conduct background checks on department

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1 employees and prospective department employees that have or  
2 will have administrative access or authority to sensitive,  
3 confidential or private information or the ability to alter  
4 systems, networks or other information technology hardware or  
5 software; and

6 ~~[(16) report to the information technology~~  
7 ~~commission projects that have been certified and are in~~  
8 ~~compliance with contingencies; and~~

9 ~~(17)]~~ (16) perform any other information  
10 technology function assigned by the governor.

11 D. Each executive agency shall submit an agency  
12 information technology plan to the secretary in the form and  
13 detail required by the secretary. Each executive agency shall  
14 conduct background checks on agency or prospective agency  
15 employees that have or will have administrative access or  
16 authority to alter systems, networks or other information  
17 technology hardware or software.

18 E. A state agency that receives an invoice from the  
19 department for services rendered to the agency shall have  
20 thirty days from receipt of the invoice to pay the department  
21 or to notify the department if the amount of the invoice is in  
22 dispute. The agency shall have fifteen days from its  
23 notification of dispute to the department to present its  
24 reasons in writing and request an adjustment. The department  
25 shall have fifteen days from its receipt of the reasons for

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1 dispute to notify the agency of its decision. If the  
2 department and the agency do not agree on a resolution, the  
3 secretary of finance and administration shall make a  
4 determination on the amount owed by the agency to the  
5 department. If the agency has not paid the department or  
6 notified the department of a dispute within thirty days of  
7 receipt of the invoice, the department shall notify the  
8 department of finance and administration and request that the  
9 department of finance and administration transfer funds from  
10 the agency to the department of information technology to  
11 satisfy the agency's obligation.

12 F. The secretary, as chief information officer,  
13 shall prepare a state information technology strategic plan for  
14 the executive branch and update it at least once every three  
15 years, which plan shall be available to agencies by July 31 of  
16 each year. The plan shall comply with the provisions of the  
17 Department of Information Technology Act and provide for the:

18 (1) interchange of information related to  
19 information technology among executive agencies;

20 (2) coordination among executive agencies in  
21 the development and maintenance of information technology  
22 systems; and

23 (3) protection of the privacy and security of  
24 individual information as well as of individuals using the  
25 state's information technology systems.

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1           G. The secretary may apply for and receive, with  
2 the governor's approval, in the name of the department, any  
3 public or private funds, including United States government  
4 funds, available to the department to carry out its programs,  
5 duties or services.

6           H. Where information technology functions of  
7 executive agencies overlap or a function assigned to one agency  
8 could better be performed by another agency, the secretary may  
9 recommend appropriate legislation to the next session of the  
10 legislature for its approval.

11           I. The secretary may make and adopt such reasonable  
12 procedural rules as may be necessary to carry out the duties of  
13 the department and its divisions and requirements and standards  
14 for the executive branch's information technology needs,  
15 functions, systems and resources, including:

- 16                   (1) information technology security;  
17                   (2) approval for procurement of information  
18 technology that exceeds an amount set by rule;  
19                   (3) detail and format for the agency  
20 information technology plan;  
21                   (4) acquisition, licensing and sale of  
22 information technology; and  
23                   (5) requirements for agency information  
24 technology projects and related plan, analysis, oversight,  
25 assessment and specifications.

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1 J. Unless otherwise provided by statute, no rule  
2 affecting any person or agency outside the department shall be  
3 adopted, amended or repealed without a public hearing on the  
4 proposed action before the secretary or a hearing officer  
5 designated by the secretary. The public hearing shall be held  
6 in Santa Fe unless otherwise permitted by statute. Notice of  
7 the subject matter of the rule, the action proposed to be  
8 taken, the time and place of the hearing, the manner in which  
9 interested persons may present their views and the method by  
10 which copies of the proposed rule, proposed amendment or repeal  
11 of an existing rule may be obtained shall be published once at  
12 least thirty days prior to the hearing date in a newspaper of  
13 general circulation and mailed at least thirty days prior to  
14 the hearing date to all persons who have made a written request  
15 for an advance notice of hearing. Rules shall be filed in  
16 accordance with the State Rules Act."

17 SECTION 3. Section 9-27-11 NMSA 1978 (being Laws 2008,  
18 Chapter 84, Section 2, as amended) is amended to read:

19 "9-27-11. EQUIPMENT REPLACEMENT PLANS--EQUIPMENT  
20 REPLACEMENT REVOLVING FUNDS.--

21 A. In order to plan for the expenditure of capital  
22 investments necessary to provide goods and services to the  
23 state and its agencies and to local public bodies and other  
24 enterprise customers, the department shall establish and  
25 maintain an equipment replacement plan for each of the

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1 department's enterprise functions. No later than September 1  
2 of each year, the plans shall be submitted to the department of  
3 finance and administration [~~the information technology~~  
4 ~~commission~~] and the legislature, accompanied by a  
5 reconciliation report of the preceding fiscal year reflecting  
6 financial activity in each of the equipment replacement  
7 revolving funds established pursuant to this section.

8 B. Upon the request of the secretary, the state  
9 treasurer shall establish in the state treasury such "equipment  
10 replacement revolving funds" as are necessary to administer  
11 each of the department's enterprise functions. The revolving  
12 funds shall consist of legislative appropriations to the funds  
13 and transfers made to the funds pursuant to Subsections C and D  
14 of this section. Income from investment of the revolving funds  
15 shall be credited back to the funds, and money in the funds  
16 shall not revert at the end of a fiscal year. Expenditures  
17 from the funds shall only be made pursuant to an appropriation  
18 from the legislature and only for the purpose of acquiring and  
19 replacing capital equipment and associated software used to  
20 provide enterprise services pursuant to the department's  
21 equipment replacement plans.

22 C. The department shall record amounts due to the  
23 equipment replacement revolving funds each fiscal year, based  
24 on the calculation of amortization and depreciation applicable  
25 to each enterprise service as reflected in the department's

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1 published cost structures for calculation of rates for  
2 services. Transfers to the funds shall be made from the  
3 operating funds of each enterprise in amounts that reconcile  
4 with the recorded amounts due. The recording of amounts due to  
5 the equipment replacement revolving funds and the transfer of  
6 the funds shall be consistent with generally accepted  
7 accounting principles.

8 D. The department may make initial transfers from  
9 its operating funds to establish the beginning fund balances as  
10 of July 1, 2008."