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AN ACT

RELATING TO INFORMATION TECHNOLOGY; AMENDING SECTIONS OF THE DEPARTMENT OF INFORMATION TECHNOLOGY ACT TO PROVIDE FOR THE DEPARTMENT TO COORDINATE THE DEVELOPMENT OF A STATEWIDE BROADBAND NETWORK; PROVIDING FOR A CENTRAL TELECOMMUNICATION NETWORK; RECONCILING CONFLICTING SECTIONS OF LAW BY REPEALING LAWS 2007, CHAPTER 288, SECTION 3.

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

SECTION 1. Section 9-27-3 NMSA 1978 (being Laws 2007, Chapter 290, Section 3) is amended to read:

"9-27-3. DEFINITIONS.--As used in the Department of Information Technology Act:

A. "department" means the department of information technology;

B. "information technology" means computer hardware and software and ancillary products and services, including:

- (1) systems design and analysis;
- (2) acquisition, storage and conversion of data;
- (3) computer programming;
- (4) information storage and retrieval;
- (5) voice, radio, video and data communications;

1 (6) requisite systems;  
2 (7) simulation and testing; and  
3 (8) related interactions between users and  
4 information systems;

5 C. "information technology project" means the  
6 purchase, replacement, development or modification of a  
7 hardware or software system;

8 D. "secretary" means the secretary of information  
9 technology;

10 E. "state information architecture" means a  
11 logically consistent set of principles, policies and  
12 standards that guides the engineering of state government's  
13 information technology systems and infrastructure in a way  
14 that ensures alignment with state government's business  
15 needs;

16 F. "state information technology strategic plan"  
17 means the information technology planning document for the  
18 state that spans a three-year period; and

19 G. "telecommunication network" means the physical  
20 and logical components and all associated infrastructure used  
21 in transporting, routing, aggregating and delivering voice  
22 and data information from computer and telecommunications  
23 systems in one location to peer systems in another."

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

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

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

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

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

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

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

25 (4) within the limitations of available

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

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

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

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

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

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

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

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

1 (c) resolve by agreement the manner and  
2 extent to which the department shall provide budgeting,  
3 record-keeping and related clerical assistance to  
4 administratively attached agencies; and

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

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

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

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

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

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

1 finance and administration;

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

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

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

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

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

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

1                   (11) review appropriation requests related  
2 to executive agency information technology requests to ensure  
3 compliance with agency plans and the state information  
4 technology strategic plan and make written recommendations by  
5 November 14 of each year to the department of finance and  
6 administration and by November 21 of each year to the  
7 legislative finance committee, the appropriate interim  
8 legislative committee and the information technology  
9 commission; provided, however, that the recommendations to  
10 the legislative committees and the commission have been  
11 agreed to by the department of information technology and the  
12 department of finance and administration;

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

18                   (13) provide oversight of information  
19 technology projects, including ensuring adequate risk  
20 management, disaster recovery and business continuity  
21 practices and monitoring compliance with strategies  
22 recommended by the information technology commission for  
23 information technology projects that affect multiple  
24 agencies;

25                   (14) conduct reviews of information

1 technology projects and provide written reports to the  
2 information technology commission and appropriate legislative  
3 oversight bodies;

4 (15) conduct background checks on department  
5 employees and prospective department employees that have or  
6 will have administrative access or authority to sensitive,  
7 confidential or private information or the ability to alter  
8 systems, networks or other information technology hardware or  
9 software;

10 (16) report to the information technology  
11 commission projects that have been certified and are in  
12 compliance with contingencies; and

13 (17) perform any other information  
14 technology function assigned by the governor.

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

22 E. A state agency that receives an invoice from  
23 the department for services rendered to the agency shall have  
24 thirty days from receipt of the invoice to pay the department  
25 or to notify the department if the amount of the invoice is

1 in dispute. The agency shall have fifteen days from its  
2 notification of dispute to the department to present its  
3 reasons in writing and request an adjustment. The department  
4 shall have fifteen days from its receipt of the reasons for  
5 dispute to notify the agency of its decision. If the  
6 department and the agency do not agree on a resolution, the  
7 secretary of finance and administration shall make a  
8 determination on the amount owed by the agency to the  
9 department. If the agency has not paid the department or  
10 notified the department of a dispute within thirty days of  
11 receipt of the invoice, the department shall notify the  
12 department of finance and administration and request that the  
13 department of finance and administration transfer funds from  
14 the agency to the department of information technology to  
15 satisfy the agency's obligation.

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

23 (1) interchange of information related to  
24 information technology among executive agencies;

25 (2) coordination among executive agencies in

1 the development and maintenance of information technology  
2 systems;

3 (3) protection of the privacy and security  
4 of individual information as well as of individuals using the  
5 state's information technology systems;

6 (4) development of a statewide broadband  
7 network plan in conjunction with the public education  
8 department, the higher education department, state  
9 universities, other educational institutions, the public  
10 school capital outlay council, political subdivisions of the  
11 state, Indian nations, tribes and pueblos, the public  
12 regulation commission and telecommunication network service  
13 providers; and

14 (5) coordination and aggregation of services  
15 where feasible for entities as provided for in Section  
16 9-27-20 NMSA 1978 and other publicly funded entities.

17 G. The secretary may apply for and receive, with  
18 the governor's approval, in the name of the department, any  
19 public or private funds, including United States government  
20 funds, available to the department to carry out its programs,  
21 duties or services.

22 H. Where information technology functions of  
23 executive agencies overlap or a function assigned to one  
24 agency could better be performed by another agency, the  
25 secretary may recommend appropriate legislation to the next

1 session of the legislature for its approval.

2 I. The secretary may make and adopt such  
3 reasonable procedural rules as may be necessary to carry out  
4 the duties of the department and its divisions and  
5 requirements and standards for the executive branch's  
6 information technology needs, functions, systems and  
7 resources, including:

8 (1) information technology security;

9 (2) approval for procurement of information  
10 technology that exceeds an amount set by rule;

11 (3) detail and format for the agency  
12 information technology plan;

13 (4) acquisition, licensing and sale of  
14 information technology; and

15 (5) requirements for agency information  
16 technology projects and related plan, analysis, oversight,  
17 assessment and specifications.

18 J. Unless otherwise provided by statute, no rule  
19 affecting any person or agency outside the department shall  
20 be adopted, amended or repealed without a public hearing on  
21 the proposed action before the secretary or a hearing officer  
22 designated by the secretary. The public hearing shall be  
23 held in Santa Fe unless otherwise permitted by statute.

24 Notice of the subject matter of the rule, the action proposed  
25 to be taken, the time and place of the hearing, the manner in

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

10 SECTION 3. Section 9-27-20 NMSA 1978 (being Laws 1963,  
11 Chapter 181, Section 1, as amended by Laws 2007, Chapter 288,  
12 Section 3 and by Laws 2007, Chapter 290, Section 20) is  
13 amended to read:

14 "9-27-20. TELECOMMUNICATIONS--DUTIES.--

15 A. The department shall enter into necessary  
16 agreements to provide, where feasible, a telecommunication  
17 network and related facilities to all executive, legislative  
18 and judicial branches. Nothing in this section shall be  
19 construed to apply to the provision of a telecommunication  
20 network and related facilities to political subdivisions of  
21 the state.

22 B. Pursuant to Section 9-27-13 NMSA 1978, the  
23 department may, where feasible and economical, provide a  
24 telecommunication network and related facilities to  
25 educational institutions that request to be included in the

1 telecommunication network and shall enter into the necessary  
2 contractual agreements with telecommunication providers to  
3 provide the telecommunication network and related facilities  
4 to educational institutions that request to be included in  
5 the telecommunication network.

6 C. Pursuant to Sections 9-27-6 and 9-27-13 NMSA  
7 1978, the department and the public education department  
8 shall coordinate to apply for reimbursements from the federal  
9 universal service fund pursuant to Section 254 of the federal  
10 Telecommunications Act of 1996, 47 U.S.C. 254, as such  
11 section existed on January 1, 2006, on behalf of state  
12 agencies, political subdivisions and educational institutions  
13 as available for telecommunication network services.

14 D. Pursuant to Section 9-27-7 NMSA 1978, the  
15 department shall establish a rate structure based on actual  
16 costs, including necessary administrative expenses, and shall  
17 charge participants according to such rate structure."

18 SECTION 4. Section 9-27-21 NMSA 1978 (being Laws 1963,  
19 Chapter 181, Section 2, as amended) is amended to read:

20 "9-27-21. CENTRAL TELECOMMUNICATION NETWORK SERVICES--  
21 STAFF--BUDGET.--The telecommunications bureau of the  
22 enterprise services division of the department shall provide  
23 the staff and material necessary to properly and adequately  
24 operate the central telecommunication network. The budget  
25 for the central telecommunication network shall be approved

1 as part of the total operating budget of the department."

2 SECTION 5. Section 9-27-22 NMSA 1978 (being Laws 1963,  
3 Chapter 181, Section 3, as amended) is amended to read:

4 "9-27-22. CHARGES FOR CENTRAL TELECOMMUNICATION NETWORK  
5 SERVICES.--Departments, institutions and agencies  
6 participating in the central telecommunication network shall  
7 be charged a pro rata and equitable share of the total  
8 monthly costs of the service. This determination is to be  
9 made by the department. Toll calls not covered by the wide-  
10 area telephone service and supplemental equipment shall be  
11 segregated and paid for by agencies, institutions and  
12 departments making the calls or using the supplemental  
13 equipment."

14 SECTION 6. Section 9-27-23 NMSA 1978 (being Laws 1963,  
15 Chapter 181, Section 4, as amended) is amended to read:

16 "9-27-23. DEPOSIT OF MONEY.--The department shall order  
17 the deposit or transfer monthly to a fund known as the  
18 "central telecommunication network fund" the amount of money  
19 owed by each department, institution and agency utilizing the  
20 central telecommunication network. State institutions and  
21 agencies shall adopt such accounting procedures as are  
22 prescribed by the department of finance and administration  
23 for the handling of payments with reference to the central  
24 telecommunication network."

25 SECTION 7. Section 9-27-24 NMSA 1978 (being Laws 1963,

1 Chapter 181, Section 5, as amended) is amended to read:

2 "9-27-24. APPROPRIATION.--All income to the central  
3 telecommunication network fund is appropriated to carry out  
4 the purposes of Sections 9-27-20 through 9-27-25 NMSA 1978 or  
5 their successor recompiled sections. Payments from the  
6 central telecommunication network fund shall be made on  
7 vouchers signed by the secretary or the secretary's  
8 designee."

9 SECTION 8. Section 9-27-25 NMSA 1978 (being Laws 1963,  
10 Chapter 181, Section 6, as amended) is amended to read:

11 "9-27-25. PARTICIPATION OR EXCLUSION OF AGENCY,  
12 DEPARTMENT OR INSTITUTION.--All departments, institutions and  
13 agencies of the state government to the extent that it is  
14 practical and feasible shall participate in the central  
15 telecommunication network. No agreement for any leased or  
16 purchased telephone service or for purchase of any telephone  
17 equipment shall be entered into by any department,  
18 institution or agency of the state participating in the  
19 central telecommunication network, except those institutions  
20 enumerated in Article 12, Section 11 of the constitution of  
21 New Mexico, except upon prior written approval of the  
22 secretary or the secretary's designee. If, on the basis of a  
23 technical survey, it is found to be infeasible or impractical  
24 to include particular agencies, departments or institutions  
25 in the central telecommunication network, the secretary or

1 the secretary's designee may exclude them. In the event of  
2 exclusion of any agency, department or institution, the  
3 secretary or the secretary's designee shall file a written  
4 statement, certifying the reasons therefor, with the state  
5 records center."

6 SECTION 9. A new section of the Department of  
7 Information Technology Act is enacted to read:

8 "INDIAN NATIONS, TRIBES AND PUEBLOS--STATEWIDE  
9 BROADBAND--RIGHT-OF-WAY AGREEMENT.--Indian nations, tribes  
10 and pueblos may connect to the statewide broadband network in  
11 exchange for a right-of-way agreement with the chief  
12 information officer. The chief information officer shall  
13 apply for reimbursements from the federal universal service  
14 fund pursuant to Section 254 of the federal  
15 Telecommunications Act of 1996, 47 U.S.C. 254, as such  
16 section existed on January 1, 2006, on behalf of Indian  
17 nations, tribes and pueblos that execute a right-of-way  
18 agreement."

19 SECTION 10. REPEAL.--Laws 2007, Chapter 888, Section 3  
20 is repealed.

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