

1 AN ACT
2 RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
3 CLARIFYING THE DEPARTMENT OF INFORMATION TECHNOLOGY'S ROLE IN
4 APPROVING INFORMATION TECHNOLOGY PROCUREMENT AND PROJECTS BY
5 STATE AGENCIES; AMENDING SECTION 9-27-6 NMSA 1978 (BEING LAWS
6 2007, CHAPTER 290, SECTION 6, AS AMENDED).

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

9 SECTION 1. Section 9-27-6 NMSA 1978 (being Laws 2007,
10 Chapter 290, Section 6, as amended) is amended to read:

11 "9-27-6. SECRETARY--DUTIES AND GENERAL POWERS.--

12 A. The secretary is responsible to the governor
13 for the operation of the department. It is the secretary's
14 duty to manage all operations of the department and to
15 administer and enforce the laws with which the secretary or
16 the department is charged.

17 B. To perform the secretary's duties, the
18 secretary has every power expressly enumerated in the laws,
19 whether granted to the secretary or the department or any
20 division of the department, except where authority conferred
21 upon any division is explicitly exempted from the secretary's
22 authority by statute. In accordance with these provisions,
23 the secretary shall:

24 (1) exercise general supervisory and
25 appointing authority over all department employees, subject

1 to any applicable personnel laws and regulations;

2 (2) delegate authority to subordinates as
3 the secretary deems necessary and appropriate, clearly
4 delineating such delegated authority and the limitations
5 thereto;

6 (3) organize the department into those
7 organizational units the secretary deems will enable it to
8 function most efficiently, subject to provisions of law
9 requiring or establishing specific organizational units;

10 (4) within the limitations of available
11 appropriations and applicable laws, employ and fix the
12 compensation of those persons necessary to discharge the
13 secretary's duties;

14 (5) take administrative action by issuing
15 orders and instructions, not inconsistent with the law, to
16 ensure implementation of and compliance with the provisions
17 of law for whose administration or execution the secretary is
18 responsible and to enforce those orders and instructions by
19 appropriate administrative action in the courts;

20 (6) conduct research and studies that will
21 improve the operations of the department and the provision of
22 services to state agencies and the residents of the state;

23 (7) provide courses of instruction and
24 practical training for employees of the department and other
25 persons involved in the administration of programs with the

1 objective of improving the operations and efficiency of
2 administration;

3 (8) prepare an annual budget of the
4 department;

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

7 (a) minimize or eliminate duplication
8 of services and jurisdictional conflicts;

9 (b) coordinate activities and resolve
10 problems of mutual concern; and

11 (c) resolve by agreement the manner and
12 extent to which the department shall provide budgeting,
13 recordkeeping and related clerical assistance to
14 administratively attached agencies;

15 (10) appoint for each division a "director".
16 These appointed positions are exempt from the provisions of
17 the Personnel Act. Persons appointed to these positions
18 shall serve at the pleasure of the secretary; and

19 (11) acquire, hold and maintain, through
20 lease, trade or purchase, any real or personal property
21 necessary to meet customer requirements or department
22 obligations, including obligations of administratively
23 attached offices or bodies.

24 C. As the chief information officer, the secretary
25 shall:

1 (1) review agency plans regarding prudent
2 allocation of information technology resources; reduction of
3 duplicate or redundant data, hardware and software; and
4 improvement of system interoperability and data accessibility
5 among agencies;

6 (2) promulgate rules for oversight of agency
7 information technology projects;

8 (3) approve agency information technology
9 projects prior to procurement;

10 (4) develop and implement procedures to
11 standardize data elements, determine data ownership and
12 ensure data sharing among executive agencies;

13 (5) verify compliance with state information
14 architecture and the state information technology strategic
15 plan before approving information technology projects;

16 (6) monitor agency compliance with its
17 agency plan, the state information technology strategic plan
18 and state information architecture and report to the
19 governor, executive agency management and the legislative
20 finance committee on noncompliance;

21 (7) develop information technology cost
22 recovery mechanisms and information systems rate and fee
23 structures of state agencies and other public or private
24 sector providers and make recommendations to the information
25 technology rate committee;

1 (8) provide technical support to executive
2 agencies in the development of their agency plans;

3 (9) ensure the use of existing public or
4 private information technology or telecommunications
5 resources when the use is practical, efficient, effective and
6 financially prudent and is in compliance with the Procurement
7 Code;

8 (10) review appropriation requests related
9 to agency information technology requests to ensure
10 compliance with agency plans and the state information
11 technology strategic plan and make written recommendations by
12 November 14 of each year to the department of finance and
13 administration and by November 21 of each year to the
14 legislative finance committee and the appropriate interim
15 legislative committee; provided, however, that the
16 recommendations to the legislative committees have been
17 agreed to by the department of information technology and the
18 department of finance and administration;

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

24 (12) provide oversight of information
25 technology projects, including ensuring adequate risk

1 management, disaster recovery and business continuity
2 practices and monitoring compliance with strategies for
3 information technology projects that affect multiple
4 agencies;

5 (13) conduct reviews of information
6 technology projects and provide written reports to the
7 appropriate legislative oversight bodies;

8 (14) conduct background checks on department
9 employees and prospective department employees that have or
10 will have administrative access or authority to sensitive,
11 confidential or private information or the ability to alter
12 systems, networks or other information technology hardware or
13 software; and

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

16 D. As the chief information officer, the secretary
17 may:

18 (1) upon the advice and recommendation of
19 the director of the office of broadband access and expansion
20 pursuant to the provisions of the Broadband Access and
21 Expansion Act, make available by lease or sale at the
22 department's established rates on a competitively neutral
23 basis such state-owned broadband network infrastructure or
24 internet service that would connect underserved and unserved
25 populations of New Mexico and otherwise support objectives of

1 the state broadband plan;

2 (2) offer cybersecurity risk prevention and
3 information technology mitigation and response solutions,
4 including application and equipment selection, intrusion
5 response, system monitoring or system testing for all users
6 of agency-operated or -owned information technology, to
7 include compliance standards for broadband infrastructure
8 projects within the oversight or administration of the
9 department; and

10 (3) establish an administrative hearing and
11 enforcement process internal to the department or in
12 coordination with the administrative hearings office to
13 support the department's private sector regulatory activities
14 or any administratively attached office or body.

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

22 F. An agency that receives an invoice from the
23 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 G. 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 9-27-
16 20 NMSA 1978 and other publicly funded entities.

17 H. 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 or those of an administratively attached
22 office or public body.

23 I. Where information technology functions of
24 executive agencies overlap or a function assigned to one
25 agency could better be performed by another agency, the

1 secretary may recommend appropriate legislation to the next
2 session of the legislature for its approval.

3 J. Pursuant to the State Rules Act and rules
4 promulgated pursuant to that act, the secretary may make and
5 adopt such reasonable procedural rules as may be necessary to
6 carry out the duties, or relating to any matter within the
7 oversight, of the department and its administratively
8 attached offices or public bodies, divisions and requirements
9 and standards for the executive branch's information
10 technology needs, functions, systems and resources,
11 including:

12 (1) information technology security;

13 (2) approval for procurement of information
14 technology not in conflict with the Procurement Code that
15 exceeds an amount set by rule;

16 (3) detail and format for the agency
17 information technology plan;

18 (4) acquisition, licensing and sale of
19 information technology; and

20 (5) requirements for agency information
21 technology projects and related plan, analysis, oversight,
22 assessment and specifications.

23 K. Unless otherwise provided by statute, no rule
24 affecting any person or agency outside the department shall be
25 adopted, amended or repealed without a public hearing on the

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