

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; CREATING THE INDIAN AFFAIRS DEPARTMENT; PROVIDING FOR A SECRETARY OF INDIAN AFFAIRS; PROVIDING POWERS AND DUTIES; APPROVING TRANSFERS OF APPROPRIATIONS, MONEY, PERSONNEL, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES.

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

Section 1. SHORT TITLE.--Sections 1 through 15 of this act may be cited as the "Indian Affairs Department Act".

Section 2. PURPOSE.--The purpose of the Indian Affairs Department Act is to create a single, unified department to administer all laws and exercise all functions formerly administered and executed by the New Mexico office of Indian affairs.

Section 3. DEFINITIONS.--As used in the Indian Affairs Department Act:

- A. "department" means the Indian affairs department; and
- B. "secretary" means the secretary of Indian affairs.

Section 4. DEPARTMENT CREATED.--The "Indian affairs department" is created in the executive branch. The department is a cabinet department and includes the following divisions:

- A. the administrative services division; and
- B. the program services division.

Section 5. SECRETARY OF INDIAN AFFAIRS.--

- A. The chief executive and administrative officer of the department is

the "secretary of Indian affairs". The secretary shall be appointed by the governor with the consent of the senate. The secretary shall hold the office at the pleasure of the governor and shall serve in the executive cabinet.

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B. An appointed secretary shall serve and have all of the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting the secretary's appointment.

Section 6. SECRETARY--DUTIES AND GENERAL POWERS.--

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

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

(1) except as otherwise provided in the Indian Affairs Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and rules;

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

(3) organize the department into those organizational units that will enable it to function most efficiently, subject to any provisions of law

requiring or establishing specific organizational units;

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

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to ensure implementation of and compliance with the provisions of law with the administration or execution of which the secretary is responsible, and to enforce those orders and instructions by appropriate administrative action or actions in the courts;

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

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

(8) prepare an annual budget of the department;

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

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

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

(c) resolve by agreement the manner and extent to

which the department shall provide budgeting, record-keeping and related clerical assistance to administratively attached agencies; and

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

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

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

E. The secretary may make and adopt such reasonable procedural rules as may be necessary to carry out the duties of the department and its divisions. A rule promulgated by the director of a division in carrying out the functions and duties of the division shall not be effective until approved by the secretary. Unless otherwise provided by statute, a rule affecting a person or agency outside the department shall not be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons

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

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Section 7. DEPARTMENT--ADDITIONAL POWERS AND DUTIES.--

A. The department is the coordinating agency for intergovernmental and interagency programs concerning tribal governments and the state.

B. The department shall:

(1) investigate, study, consider and act upon the entire subject of Indian conditions and relations within New Mexico, including problems of health, economy and education and the effect of local, state and federal legislative, executive and judicial actions. In performing its functions, the department shall provide an opportunity for the presentation and exchange of ideas in respect to Indian affairs of the state by all interested persons; and

(2) assist in setting the policy, and act as the clearinghouse, for all state programs affecting the Indian people of New Mexico.

C. The department may:

(1) hold hearings, conduct meetings, make investigations and confer with officials of local, state and federal agencies to secure cooperation between the local, state, federal and Indian tribal governments in the promotion of the welfare of the Indian people of New Mexico;

(2) contract with tribal governments, public agencies or

private persons to provide services and facilities for promoting the welfare of the Indian people of New Mexico; and

(3) solicit and accept gifts, grants, donations, bequests and devises.

Section 8. ORGANIZATIONAL UNITS OF THE DEPARTMENT--POWERS AND DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--

A. Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, who shall retain the final decision-making authority and responsibility for the administration of any such laws.

B. The department shall have access to all records, data and information of other state departments that are not specifically held confidential by law.

Section 9. DIVISION DIRECTORS.--Except as otherwise provided by law, the secretary shall appoint, with the approval of the governor, "directors" of divisions established within the department. The directors so appointed are exempt from the Personnel Act.

Section 10. BUREAU CHIEFS.--The secretary may establish within each division such "bureaus" as the secretary deems necessary to carry out the provisions of the Indian Affairs Department Act. The secretary shall appoint a "chief" to be the administrative head of a bureau. A chief and all subsidiary employees of the department are covered by the Personnel Act unless otherwise

provided by law.

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Section 11. ADMINISTRATIVE SERVICES DIVISION--DUTIES.--The administrative services division shall provide administrative services to the department, including:

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A. keeping all official records of the department; B. providing clerical services in the areas of personnel and budget preparation; and

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C. providing clerical, record-keeping and administrative support to agencies administratively attached to the department, at their request.

Section 12. PROGRAM SERVICES DIVISION--DUTIES.--The program services division shall provide program implementation and support for field programs and services.

Section 13. INDIAN AFFAIRS COMMISSION CREATED.--

A. The "Indian affairs commission" is created. The commission shall consist of ten members who are residents of New Mexico appointed by the governor as follows:

- (1) three members shall be Pueblo Indians;
- (2) three members shall be Navajo Indians;
- (3) two members shall be Apache Indians;
- (4) one member shall be an urban Indian; and
- (5) one member shall be a non-Indian.

B. Indian members, except the urban Indian member, shall be appointed from lists of names submitted by the all Indian pueblo council, the Jicarilla and Mescalero tribal councils and the Navajo Nation.

C. Members serve at the pleasure of the governor. Vacancies shall

be filled by appointment by the governor for the unexpired term.

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D. The governor shall appoint the chairman and the commission may select such other officers as the commission deems necessary.

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E. Members may receive per diem and mileage pursuant to the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance.

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Section 14. POWERS OF THE COMMISSION.--The commission shall:

A. conduct meetings to provide an opportunity for the presentation and exchange of ideas with respect to Indian affairs by any interested party that result in the promotion of the welfare of the Indian people;

B. receive and disseminate information on issues that significantly impact the welfare of the Indian people;

C. apprise the secretary of the conditions in Native American communities in New Mexico; and

D. advise the secretary on policy matters related to the department's powers and duties.

Section 15. PRESERVATION OF INDIAN LEGENDS.--The department may employ not more than two persons for each Indian tribe or pueblo in the state to record the legends of the tribe or pueblo in the English language for the purpose of making them available for dissemination to the public. Persons employed to record the legends shall be members of the tribe or pueblo, shall have knowledge of both English and the language spoken by the particular tribe or pueblo and shall be familiar with a means of recording the legends in the English language. The department may employ personnel and purchase recording equipment necessary to

fulfill the purpose of this section.

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Section 16. Section 9-8-8 NMSA 1978 (being Laws 1977, Chapter 252, Section 9, as amended) is amended to read:

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"9-8-8. ADMINISTRATIVELY ATTACHED AGENCIES.--The commission on the status of women is administratively attached to the human services department in accordance with the Executive Reorganization Act."

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Section 17. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS, PERSONNEL, PROPERTY, CONTRACTS AND REFERENCES IN LAW.--The transfer of functions, personnel, appropriations, money, records, equipment, supplies, other property, contractual obligations and statutory references of the New Mexico office of Indian affairs to the Indian affairs department pursuant to executive order issued in accordance with Laws 2003, Chapter 403 is approved.

Section 18. REPEAL.--Sections 28-12-4 through 28-12-9 NMSA 1978 (being Laws 1975 (1st S.S.), Chapter 11, Section 1, Laws 1955, Chapter 162, Sections 2 through 4, Laws 1967, Chapter 225, Section 1 and Laws 1955, Chapter 162, Section 16, as amended) are repealed.