

1 AN ACT  
2 RELATING TO EXECUTIVE ORGANIZATION; CREATING THE INDIAN AFFAIRS  
3 DEPARTMENT; PROVIDING FOR A SECRETARY OF INDIAN AFFAIRS;  
4 PROVIDING POWERS AND DUTIES; APPROVING TRANSFERS OF  
5 APPROPRIATIONS, MONEY, PERSONNEL, PROPERTY, CONTRACTUAL  
6 OBLIGATIONS AND STATUTORY REFERENCES.

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

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

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

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

16 A. "department" means the Indian affairs department; and

17 B. "secretary" means the secretary of Indian affairs.

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

21 A. the administrative services division; and

22 B. the program services division.

23 Section 5. SECRETARY OF INDIAN AFFAIRS.--

24 A. The chief executive and administrative officer of the department is  
25 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.

1 B. An appointed secretary shall serve and have all of the duties, S  
2 responsibilities and authority of that office during the period of time prior to final B  
3 action by the senate confirming or rejecting the secretary's appointment. 3

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

5 A. The secretary is responsible to the governor for the operation of 4  
6 the department. It is the secretary's duty to manage all operations of the P  
7 department and to administer and enforce the laws with which the secretary or the a  
8 department is charged. g  
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9 B. To perform his duties, the secretary has every power expressly  
10 enumerated in the laws, whether granted to the secretary or any division of the  
11 department, except where authority conferred upon any division in the department  
12 is explicitly exempted from the secretary's authority by statute. In accordance with  
13 these provisions, the secretary shall: 2

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

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

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

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

25 (5) take administrative action by issuing orders and  
instructions, not inconsistent with the law, to ensure implementation of and

1 compliance with the provisions of law with the administration or execution of which  
2 the secretary is responsible, and to enforce those orders and instructions by  
3 appropriate administrative action or actions in the courts;  
4 (6) conduct research and studies that will improve the  
5 operations of the department and the provision of services to the citizens of the  
6 state;  
7 (7) provide courses of instruction and practical training for  
8 employees of the department and other persons involved in the administration of  
9 programs with the objective of improving the operations and efficiency of  
10 administration;  
11 (8) prepare an annual budget of the department;  
12 (9) provide cooperation, at the request of heads of  
13 administratively attached agencies, in order to:  
14 (a) minimize or eliminate duplication of services and  
15 jurisdictional conflicts;  
16 (b) coordinate activities and resolve problems of  
17 mutual concern; and  
18 (c) resolve by agreement the manner and extent to  
19 which the department shall provide budgeting, record-keeping and related clerical  
20 assistance to administratively attached agencies; and  
21 (10) appoint, with the governor's consent, for each division, a  
22 "director". These appointed positions are exempt from the provisions of the  
23 Personnel Act. Persons appointed to these positions shall serve at the pleasure of  
24 the secretary.  
25 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

1 programs, duties or services.

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

6 E. The secretary may make and adopt such reasonable procedural  
7 rules as may be necessary to carry out the duties of the department and its  
8 divisions. A rule promulgated by the director of a division in carrying out the  
9 functions and duties of the division shall not be effective until approved by the  
10 secretary. Unless otherwise provided by statute, a rule affecting a person or  
11 agency outside the department shall not be adopted, amended or repealed without  
12 a public hearing on the proposed action before the secretary or a hearing officer  
13 designated by the secretary. The public hearing shall be held in Santa Fe unless  
14 otherwise permitted by statute. Notice of the subject matter of the rule, the action  
15 proposed to be taken, the time and place of the hearing, the manner in which  
16 interested persons may present their views and the method by which copies of the  
17 proposed rule, proposed amendment or repeal of an existing rule may be obtained  
18 shall be published once at least thirty days prior to the hearing date in a newspaper  
19 of general circulation and mailed at least thirty days prior to the hearing date to all  
20 persons who have made a written request for advance notice of hearing. All rules  
21 shall be filed in accordance with the State Rules Act.

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

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

25 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

1 health, economy and education and the effect of local, state and federal legislative,  
2 executive and judicial actions. The department shall collaborate with other state  
3 departments or agencies that have an interest or stake in the subject being  
4 investigated, studied or considered. In performing its functions, the department  
5 shall provide an opportunity for the presentation and exchange of ideas in respect  
6 to Indian affairs of the state by all interested persons; and

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

9 C. The department may:

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

14 (2) contract with tribal governments, public agencies or  
15 private persons to provide services and facilities for promoting the welfare of the  
16 Indian people of New Mexico; and

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

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

21 A. Those organizational units of the department and the officers of  
22 those units specified by law shall have all of the powers and duties enumerated in  
23 the specific laws involved. However, the carrying out of those powers and duties  
24 shall be subject to the direction and supervision of the secretary, who shall retain  
25 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

1 information of other state departments that are not specifically held confidential by S  
2 law. B

3 Section 9. DIVISION DIRECTORS.--Except as otherwise provided by law, 3  
4 the secretary shall appoint, with the approval of the governor, "directors" of divisions 6  
5 established within the department. The directors so appointed are exempt from the 4  
6 Personnel Act. P  
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7 Section 10. BUREAU CHIEFS.--The secretary may establish within each 6  
8 division such "bureaus" as the secretary deems necessary to carry out the  
9 provisions of the Indian Affairs Department Act. The secretary shall appoint a  
10 "chief" to be the administrative head of a bureau. A chief and all subsidiary  
11 employees of the department are covered by the Personnel Act unless otherwise  
12 provided by law.

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

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

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

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

23 Section 13. INDIAN AFFAIRS COMMISSION CREATED.--

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

- (1) three members shall be Pueblo Indians;

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

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

8 C. Members serve at the pleasure of the governor. Vacancies shall  
9 be filled by appointment by the governor for the unexpired term.

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

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

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

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

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

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

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

25 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

1 making them available for dissemination to the public. Persons employed to record S  
2 the legends shall be members of the tribe or pueblo, shall have knowledge of both B  
3 English and the language spoken by the particular tribe or pueblo and shall be 3  
4 familiar with a means of recording the legends in the English language. The 6  
5 department may employ personnel and purchase recording equipment necessary to 4  
6 fulfill the purpose of this section. P  
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7 Section 16. Section 9-8-8 NMSA 1978 (being Laws 1977, Chapter 252, 8  
8 Section 9, as amended) is amended to read:

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

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

18 Section 18. REPEAL.--Sections 28-12-4 through 28-12-9 NMSA 1978  
19 (being Laws 1975 (1st S.S.), Chapter 11, Section 1, Laws 1955, Chapter 162,  
20 Sections 2 through 4, Laws 1967, Chapter 225, Section 1 and Laws 1955, Chapter  
21 162, Section 5, as amended) are repealed.

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