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BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

DISCUSSION DRAFT

FOR THE GOVERNMENT RESTRUCTURING TASK FORCE

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; REORGANIZING THE DEPARTMENT OF FINANCE AND ADMINISTRATION AND THE GENERAL SERVICES DEPARTMENT; CENTRALIZING ADMINISTRATIVE FUNCTIONS OF CERTAIN EXECUTIVE AGENCIES INTO THE DEPARTMENT OF FINANCE AND ADMINISTRATION; MOVING THE PERSONNEL OFFICE AND THE PURCHASING DIVISION OF THE GENERAL SERVICES DEPARTMENT INTO THE DEPARTMENT OF FINANCE AND ADMINISTRATION; MAKING THE GENERAL SERVICES DEPARTMENT A NON-CABINET DEPARTMENT; CREATING THE EXECUTIVE SERVICES BUREAU, STATE PERSONNEL DIVISION, PURCHASING DIVISION AND THE EDUCATIONAL FINANCE AND ACCOUNTABILITY DIVISION OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION; ESTABLISHING QUALIFICATIONS FOR THE STATE PERSONNEL DIRECTOR; TRANSFERRING APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 9-6-1 NMSA 1978 (being Laws 1977, Chapter 247, Section 1) is amended to read:

"9-6-1. SHORT TITLE.--~~[Sections 1 through 7 of this act]~~
Chapter 9, Article 6 NMSA 1978 may be cited as the "Department of Finance and Administration Act".

SECTION 2. Section 9-6-2 NMSA 1978 (being Laws 1977, Chapter 247, Section 2, as amended) is amended to read:

"9-6-2. PURPOSE.--The purpose of the Department of Finance and Administration Act is to make state government more efficient and responsive through consolidating, and eliminating the overlapping of, certain state government functions; and to establish a single, unified department to administer laws relating to finance and oversight of state government; and to perform other duties as provided by law."

SECTION 3. Section 9-6-3 NMSA 1978 (being Laws 1977, Chapter 247, Section 3, as amended) is repealed and a new Section 9-6-3 NMSA 1978 is enacted to read:

"9-6-3. [NEW MATERIAL] DEPARTMENT OF FINANCE AND ADMINISTRATION--CREATED--DIVISIONS.--

A. The "department of finance and administration" is created as a cabinet department that includes the following organizational units:

- (1) office of the secretary;

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- 1 (2) administrative services division,
2 including:
3 (a) executive services bureau; and
4 (b) capital outlay planning and
5 monitoring bureau;
6 (3) board of finance division;
7 (4) educational finance and accountability
8 division;
9 (5) financial control division;
10 (6) local government division;
11 (7) purchasing division, which includes the
12 management and contracts review bureau;
13 (8) state budget division; and
14 (9) state personnel division.

15 B. The secretary may organize the department and
16 the divisions specified in Subsection A of this section and may
17 transfer or merge functions between divisions in the interest
18 of efficiency and economy, but the secretary shall present the
19 organization to the legislature for statutory revision. The
20 secretary shall not create new divisions without the express
21 authority of the legislature."

22 SECTION 4. A new section of Department of Finance and
23 Administration Act is enacted to read:

24 "[NEW MATERIAL] ADMINISTRATIVELY ATTACHED AGENCIES.--The
25 following agencies are administratively attached to the

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1 department:

- 2 A. the acequia commission;
- 3 B. the state board of finance;
- 4 C. the personnel board;
- 5 D. the New Mexico community development council;
- 6 E. the civil legal services commission; and
- 7 F. the land grant council."

8 SECTION 5. Section 9-6-4 NMSA 1978 (being Laws 1977,
9 Chapter 247, Section 4, as amended) is amended to read:

10 "9-6-4. DEPARTMENT OF FINANCE AND ADMINISTRATION--
11 SECRETARY--APPOINTMENT--QUALIFICATIONS.--The administrative and
12 executive head of the department of finance and administration
13 is the "secretary of finance and administration", who [~~shall~~
14 ~~be~~] is a member of the executive cabinet. The secretary shall
15 be appointed by the governor with the advice and consent of the
16 senate. The secretary shall be well versed in governmental
17 finance."

18 SECTION 6. Section 9-6-5 NMSA 1978 (being Laws 1977,
19 Chapter 247, Section 5, as amended) is amended to read:

20 "9-6-5. SECRETARY--DUTIES AND GENERAL POWERS.--
21 A. The secretary of finance and administration is
22 responsible to the governor for the operation of the
23 department. It is [~~his~~] the secretary's duty to manage all
24 operations of the department and to administer and enforce the
25 laws with which [~~he~~] the secretary or the department is

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1 charged.

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

9 (1) except as otherwise provided in the
10 Department of Finance and Administration Act, exercise general
11 supervisory and appointing authority over all department
12 employees, subject to any applicable personnel laws and
13 [~~regulations~~] rules;

14 (2) delegate authority to subordinates as [~~he~~]
15 the secretary deems necessary and appropriate, clearly
16 delineating such delegated authority and the limitations
17 [~~thereto~~] of that authority;

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

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

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1 (5) take administrative action by issuing
2 orders and instructions, not inconsistent with the law, to
3 assure implementation of and compliance with the provisions of
4 law with the administration or execution of which ~~[he]~~ the
5 secretary is responsible, and to enforce those orders and
6 instructions by appropriate administrative action or actions in
7 the courts;

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

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

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

18 (9) provide ~~[cooperation, at the request of~~
19 ~~heads of]~~ administrative services to administratively attached
20 agencies and cooperate with adjunct agencies in order to:

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

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, record-~~
2 ~~keeping and related clerical assistance to administratively~~
3 ~~attached agencies];~~

4 (10) appoint, with the governor's consent, one
5 "deputy secretary", and, for each division and office, a
6 "director". These appointed positions are exempt from the
7 provisions of the Personnel Act. Persons appointed to these
8 positions shall serve at the pleasure of the secretary; and

9 (11) serve as, or designate the deputy
10 secretary to serve as, executive officer of the state board of
11 finance

12 [~~(12) give bond as provided in the Surety Bond~~
13 ~~Act. The department shall pay the cost of such bond; and~~

14 ~~(13) require faithful performance or other~~
15 ~~fidelity bonds of such department employees and officers as he~~
16 ~~deems necessary, as provided in the Surety Bond Act. The~~
17 ~~department shall pay the costs of such bonds].~~

18 C. The secretary may apply for and receive, with
19 the governor's approval, in the name of the department, any
20 public or private funds, including [~~but not limited to~~] United
21 States government funds, available to the department to carry
22 out its programs, duties or services.

23 D. Where functions of departments overlap, or a
24 function assigned to one department could [~~better~~] be performed
25 better by another department, [~~a~~] the secretary may recommend

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

3 E. The secretary may make and adopt such reasonable
4 administrative and procedural rules [~~and regulations~~] as may be
5 necessary to carry out the duties of the department and its
6 divisions. No rule [~~or regulation~~] promulgated by the director
7 of any division or office in carrying out the functions and
8 duties of the division or office shall be effective until
9 approved by the secretary unless otherwise provided by statute.
10 Unless otherwise provided by statute, no [~~regulation~~] rule
11 affecting any person or agency outside the department shall be
12 adopted, amended or repealed without a public hearing on the
13 proposed action before the secretary or a hearing officer
14 designated by [~~him~~] the secretary. The public hearing shall be
15 held in Santa Fe unless otherwise permitted by statute. Notice
16 of the subject matter of the [~~regulation~~] rule, the action
17 proposed to be taken, the time and place of the hearing, the
18 manner in which interested persons may present their views and
19 the method by which copies of the proposed [~~regulation~~] rule or
20 proposed amendment or repeal of an existing [~~regulation~~] rule
21 may be obtained shall be published once at least thirty days
22 prior to the hearing date in a newspaper of general circulation
23 and mailed at least thirty days prior to the hearing date to
24 all persons who have made a written request for advance notice
25 of hearing. All rules [~~and regulations~~] shall be filed in

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1 accordance with the State Rules Act."

2 SECTION 7. Section 9-6-5.1 NMSA 1978 (being Laws 1983,
3 Chapter 296, Section 7) is amended to read:

4 "9-6-5.1. PLANNING POWERS AND DUTIES OF SECRETARY OF
5 FINANCE AND ADMINISTRATION.--The secretary of [~~the department~~
6 ~~of~~] finance and administration, in addition to the other powers
7 and duties conferred:

8 A. shall review federal grant applications and
9 provide management assistance to other state agencies and local
10 governments;

11 B. shall coordinate, in accordance with directives
12 from the governor's office of policy and planning, state agency
13 plans for economic, natural resource, energy resource and human
14 resource development;

15 C. shall provide aid to planning and development
16 districts in developing grant proposals and cooperate with
17 other local entities in developing grant proposals;

18 D. shall acquire, study and review all plans for
19 capital projects proposed by state agencies and render advice
20 on the plans. The secretary shall maintain long-range
21 estimates and plans for capital projects and develop standards
22 for measuring the need for and utility of proposed projects;

23 E. may contract for, receive and utilize any grants
24 or other financial assistance made available by the United
25 States government or by any other source, public or private;

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1 F. may provide planning and funding assistance to
2 units of local government, council of government organizations,
3 Indian tribal governments situated within New Mexico and ~~[to]~~
4 nonprofit entities having for their purpose local, regional or
5 community betterment. The secretary, incident to any such
6 programs, may enter into contracts and agreements with such
7 units of local government, council of government organizations,
8 Indian tribal governments, nonprofit entities and the federal
9 government and may participate in or receive aid from any
10 federal or private program in relation to such a planning
11 program or assistance;

12 G. shall confer with the state budget division of
13 the department of finance and administration in developing
14 comprehensive plans to assure coordination of planning and
15 budgeting functions;

16 H. shall coordinate the state clearinghouse review
17 process;

18 I. shall develop a status of the state report;

19 J. shall review and coordinate comment by state
20 agencies on draft environmental impact statements;

21 K. shall provide community development block grant
22 technical assistance to local governments;

23 L. shall administer, in consultation with and upon
24 advice and direction from the community development block grant
25 policy committee, the program for the state community

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1 development block grant program;

2 M. shall serve as staff to the New Mexico
3 association of regional councils;

4 N. shall maintain a state planning library; and

5 O. shall provide planning assistance to county and
6 multicounty districts relative to application by such districts
7 for financial assistance and for regional plan development."

8 SECTION 8. Section 9-6-15 NMSA 1978 (being Laws 2003,
9 Chapter 153, Section 69) is repealed and a new Section 9-6-15
10 NMSA 1978 is enacted to read:

11 "9-6-15. [NEW MATERIAL] EDUCATIONAL FINANCE AND
12 ACCOUNTABILITY DIVISION--DUTIES.--

13 A. The educational finance and accountability
14 division shall monitor and oversee public school and higher
15 education finances and budgets and provide an independent
16 evaluation of how well the two public education systems are
17 performing and how well the public education department and
18 higher education department perform in holding those systems
19 accountable to students, taxpayers and citizens.

20 B. The director of the division shall be skilled in
21 accountancy and auditing and familiar with the operation of
22 public school and post-secondary educational institution
23 budgets and finances. The director shall be appointed by the
24 secretary of finance and administration with the governor's
25 consent.

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1 C. The public education department, higher
2 education department, school districts, public post-secondary
3 educational institutions and other agencies of the state shall
4 cooperate with the division and provide information as
5 requested by the division.

6 D. In addition to overseeing and monitoring public
7 school and post-secondary educational institution budgets and
8 finances, the division shall conduct an ongoing evaluation of:

9 (1) the unified pre-kindergarten through
10 post-graduate education accountability data system;

11 (2) for public schools, how well the public
12 education department monitors public schools and compliance
13 with the Public School Code, including the Assessment and
14 Accountability Act, in particular the success of interventions
15 made for schools in need of improvement; the School Personnel
16 Act, in particular the three-tiered licensing system for
17 teachers and school administrators and the evaluation system
18 that is required for continued licensure; the Compulsory School
19 Attendance Law; compliance with the Audit Act; implementation
20 of federal laws, including the Individuals with Disabilities
21 Education Act; and other requirements and measures intended to
22 improve the administration and delivery of public education and
23 improve outputs and outcomes, including decreasing dropout
24 rates, increasing graduation rates, preparing students for
25 college or careers and decreasing the need for remediation in

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1 higher education;

2 (3) for higher education, how well the higher
3 education department monitors post-secondary educational
4 institutions; the Post-Secondary Education Articulation Act;
5 the use of common student identification numbers and
6 participation in the unified pre-kindergarten through post-
7 graduate education accountability system; higher education
8 department annual accountability reports; the review process by
9 the higher education department and the state board of finance
10 regarding capital expenditures; the system of accounting and
11 reporting provided for in Section 21-1-33 NMSA 1978; and other
12 requirements and measures intended to improve the
13 administration and delivery of post-secondary education and
14 improve outputs and outcomes, including decreasing dropout
15 rates, increasing graduation rates, particularly baccalaureate
16 graduation within four or five years, and preparing students
17 for professional or vocational careers; and

18 (4) any other matters related to pre-
19 kindergarten through post-graduate education assigned to it by
20 the legislature or the secretary."

21 SECTION 9. A new section of the Department of Finance and
22 Administration Act is enacted to read:

23 "[NEW MATERIAL] EXECUTIVE SERVICES BUREAU--DUTIES.--The
24 executive services bureau shall provide budgeting,
25 recordkeeping and related administrative and clerical

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1 assistance for small agencies of the executive branch."

2 [MORE - GOTTA FILL IN THE BLANKS]

3 SECTION 10. Section 9-17-3 NMSA 1978 (being Laws 1983,
4 Chapter 301, Section 3, as amended) is amended to read:

5 "9-17-3. GENERAL SERVICES DEPARTMENT--CREATION--TRANSFER
6 AND MERGER OF DIVISION FUNCTIONS--MERGER AND CREATION OF
7 DIVISIONS.--

8 A. The "general services department" is created as
9 a non-cabinet department. The department shall consist of
10 those divisions created by law or executive order, [~~as modified~~
11 ~~by executive order pursuant to Subsection C of this section~~]
12 including:

- 13 (1) the administrative services division;
- 14 (2) the building services division;
- 15 (3) the property control division;
- 16 [~~(4)~~] ~~the purchasing division;~~
- 17 ~~(5)]~~ (4) the risk management division; and
- 18 [~~(6)]~~ (5) the transportation services

19 division, including:

- 20 (a) the state aviation bureau; and
- 21 (b) the surplus property bureau.

22 B. The secretary of general services is empowered
23 to organize the department and the divisions specified in
24 Subsection A of this section and may transfer or merge
25 functions between divisions and may merge divisions in the

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1 interest of efficiency and economy.

2 [G. ~~The governor is empowered to merge divisions of~~
3 ~~the department or to create additional divisions by executive~~
4 ~~order in the interest of efficiency or economy.]"~~

5 SECTION 11. Section 9-17-4 NMSA 1978 (being Laws 1983,
6 Chapter 301, Section 4) is amended to read:

7 "9-17-4. GENERAL SERVICES DEPARTMENT--~~[SECRETARY]~~
8 SUPERINTENDENT--APPOINTMENT--QUALIFICATIONS.--The
9 administrative and executive head of the general services
10 department is the "~~[secretary]~~ superintendent of general
11 services" ~~[who shall be a member of the executive cabinet].~~
12 The ~~[secretary]~~ superintendent shall be appointed by the
13 governor with the advice and consent of the senate. The
14 ~~[secretary]~~ superintendent shall be well versed in
15 administrative services and management."

16 SECTION 12. Section 9-17-5 NMSA 1978 (being Laws 1983,
17 Chapter 301, Section 5) is amended to read:

18 "9-17-5. ~~[SECRETARY]~~ SUPERINTENDENT--DUTIES AND GENERAL
19 POWERS.--

20 A. The ~~[secretary]~~ superintendent is responsible to
21 the governor for the operation of the department. It is ~~[his]~~
22 the superintendent's duty to manage all operations of the
23 department and to administer and enforce the laws with which
24 ~~[he]~~ the superintendent or the department is charged.

25 B. To perform ~~[his]~~ the superintendent's duties,

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1 the ~~[secretary]~~ superintendent has every power expressly
2 enumerated in the laws, whether granted to the ~~[secretary]~~
3 superintendent or the department, or any division of the
4 department, except where authority conferred upon any division
5 is explicitly exempted from the ~~[secretary's]~~ superintendent's
6 authority by statute. In accordance with these provisions, the
7 ~~[secretary]~~ superintendent shall:

8 (1) except as otherwise provided in the
9 General Services Department Act, exercise general supervisory
10 and appointing authority over all department employees, subject
11 to any applicable personnel laws and ~~[regulations]~~ rules;

12 (2) delegate authority to subordinates as ~~[he]~~
13 the superintendent deems necessary and appropriate, clearly
14 delineating such delegated authority and the limitations
15 thereto;

16 (3) organize the department into those
17 organizational units ~~[he]~~ that the superintendent deems will
18 enable it to function most efficiently, subject to any
19 provisions of law, including executive orders of the governor,
20 requiring or establishing specific organizational units;

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

25 (5) take administrative action by issuing

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1 orders and instructions, not inconsistent with law, to assure
2 implementation of and compliance with the provisions of law for
3 whose administration or execution [~~he~~] the superintendent is
4 responsible, and to enforce those orders and instructions by
5 appropriate administrative action or action in the courts;

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

9 (7) provide courses of instruction and
10 practical training for employees of the department and to other
11 persons involved in the administration of programs, with the
12 objective of improving the operations and efficiency of
13 administration;

14 (8) prepare the department's annual budget;

15 (9) cooperate with the heads of
16 administratively attached agencies, and adjunct agencies, at
17 their request, in order to:

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

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

22 [~~(c) resolve by agreement the manner and~~
23 ~~extent to which the department shall provide budgeting, record-~~
24 ~~keeping and related clerical assistance to administratively~~
25 ~~attached agencies;]~~

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1 (10) appoint, with the governor's consent, one
2 "deputy [~~secretary~~] superintendent" and, for each division, a
3 "director". These appointed positions are exempt from the
4 provisions of the Personnel Act. Persons appointed to these
5 positions shall serve at the pleasure of the [~~secretary~~]
6 superintendent

7 [~~(11) give bond as provided in the Surety Bond~~
8 ~~Act. The department shall pay the cost of such bond; and~~

9 ~~(12) require faithful performance or other~~
10 ~~fidelity bonds of such department employees and officers as he~~
11 ~~deems necessary, as provided in the Surety Bond Act. The~~
12 ~~department shall pay the cost of such bonds].~~

13 C. The [~~secretary~~] superintendent may apply for and
14 receive, with the governor's approval, in the name of the
15 department, any public or private funds, including but not
16 limited to United States government funds, available to the
17 department to carry out its programs, duties or services.

18 D. Where functions of departments overlap or a
19 function assigned to one department could be better performed
20 by another department, the [~~secretary~~] superintendent may
21 recommend appropriate legislation to the next session of the
22 legislature for its approval.

23 E. The [~~secretary~~] superintendent may make and
24 adopt such reasonable administrative and procedural rules [~~and~~
25 ~~regulations~~] as may be necessary to carry out the duties of the

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1 department and its divisions. No rule [~~or regulation~~]
2 promulgated by the director of any division in carrying out the
3 functions and duties of the division shall be effective until
4 approved by the [~~secretary~~] superintendent unless otherwise
5 provided by statute. Unless otherwise provided by statute, no
6 [~~regulation~~] rule affecting any person or agency outside the
7 department shall be adopted, amended or repealed without a
8 public hearing on the proposed action before the [~~secretary~~]
9 superintendent or a hearing officer designated by [~~him~~] the
10 superintendent. The public hearing shall be held in Santa Fe
11 unless otherwise permitted by statute. Notice of the subject
12 matter of the [~~regulation~~] rule, the action proposed to be
13 taken, the time and place of the hearing, the manner in which
14 interested persons may present their views and the method by
15 which copies of the proposed [~~regulation~~] rule or proposed
16 amendment or repeal of an existing [~~regulation~~] rule may be
17 obtained shall be published once at least thirty days prior to
18 the hearing date in a newspaper of general circulation in the
19 state and mailed at least thirty days prior to the hearing date
20 to all persons who have made written request for advance notice
21 of hearing. All rules [~~and regulations~~] shall be filed in
22 accordance with the State Rules Act."

23 SECTION 13. Section 9-17-6 NMSA 1978 (being Laws 1983,
24 Chapter 301, Section 6, as amended) is repealed and a new
25 Section 9-17-6 NMA 1978 is enacted to read:

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1 "9-17-6. "[NEW MATERIAL] ADMINISTRATIVELY ATTACHED
2 AGENCY.--The governor's residence advisory commission is
3 administratively attached to the general services department."

4 SECTION 14. Section 10-9-10 NMSA 1978 (being Laws 1961,
5 Chapter 240, Section 7, as amended) is amended to read:

6 "10-9-10. BOARD DUTIES.--The board shall:

7 [~~A. promulgate regulations to effectuate the~~
8 ~~Personnel Act;~~

9 B.] A. hear appeals and make recommendations to
10 employers;

11 [~~G. hire, with the approval of the governor, a~~
12 ~~director experienced in the field of personnel administration;~~

13 D. review budget requests prepared by the director
14 for the operation of the personnel program and make appropriate
15 recommendations thereon;

16 E.] B. make investigations, studies and audits
17 necessary to the proper administration of the Personnel Act;

18 [~~F.~~] C. make an annual report to the governor at
19 the end of each fiscal year; and

20 [~~G. establish and maintain liaison with the general~~
21 ~~services department; and~~

22 H.] D. represent the public interest in the
23 improvement of personnel administration in the system."

24 SECTION 15. A new section of the Personnel Act is enacted
25 to read:

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1 "[NEW MATERIAL] STATE PERSONNEL DIRECTOR--
2 QUALIFICATIONS--CONFIRMATION.--The "state personnel director"
3 shall be a person of recognized character and ability appointed
4 by the secretary of finance and administration based solely on
5 the director's qualifications for the position without regard
6 to political affiliation. The director shall have at least a
7 master's degree in human resource management or public or
8 business administration or a related field and at least seven
9 years' progressive experience in applying the principles,
10 methods and techniques of personnel administration. The state
11 personnel director shall be confirmed by the senate."

12 SECTION 16. Section 10-9-12 NMSA 1978 (being Laws 1961,
13 Chapter 240, Section 8, as amended) is amended to read:

14 "10-9-12. DIRECTOR DUTIES.--The director shall:

15 A. supervise all administrative and technical
16 personnel activities of the state;

17 ~~[B. act as secretary to the board;~~

18 ~~G.]~~ B. establish, maintain and publish annually a
19 roster of all employees of the state showing for each employee
20 [his] the employee's division, title, pay rate and other
21 pertinent data;

22 ~~[D.]~~ C. make annual reports to the board;

23 ~~[E.]~~ D. recommend to the ~~[board]~~ secretary of
24 finance and administration rules ~~[he]~~ that the director
25 considers necessary or desirable to effectuate the Personnel

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1 Act; and

2 ~~[F-]~~ E. supervise all tests and prepare lists of
3 persons passing them to submit to prospective employers."

4 **SECTION 17.** Section 10-9-21 NMSA 1978 (being Laws 1961,
5 Chapter 240, Section 15, as amended) is amended to read:

6 "10-9-21. PROHIBITED ACTS.--

7 A. No employer shall dismiss an employee for
8 failure or refusal to pay or promise to pay any assessment,
9 subscription or contribution to any political organization or
10 candidate; however, nothing contained in this section shall
11 prevent voluntary contributions to political organizations.

12 B. No person in the personnel office or employee in
13 the service shall hold political office except for a non-
14 partisan county or municipal office or be an officer of a
15 political organization during ~~[his]~~ employment. For the
16 purposes of the Personnel Act, being a local school board
17 member or an elected board member of any post-secondary
18 educational institution shall not be construed to be holding
19 political office and being an election official shall not be
20 construed to be either holding political office or being an
21 officer of a political organization. Nothing in the Personnel
22 Act shall deny employees the right to vote as they choose or to
23 express their opinions on political subjects and candidates.

24 C. Any employee who becomes a candidate for public
25 office shall, upon filing or accepting the nomination and

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1 during the campaign, take a leave of absence. This subsection
2 does not apply to those employees of a grant-in-aid agency
3 whose political activities are governed by federal statute.

4 D. The director shall investigate any written
5 charge by any person that this section has been violated and
6 take whatever steps deemed necessary.

7 E. No person shall be refused the right of taking
8 an examination, from appointment to a position, from promotion
9 or from holding a position because of political or religious
10 opinions or affiliation or because of race or color.

11 F. No employee or probationer shall engage in
12 partisan political activity while on duty.

13 G. With respect to employees of federal grant-in-
14 aid agencies, the applicable personnel standards, regulations
15 and federal laws limiting activities shall apply and shall be
16 set forth in rules promulgated by the [~~board~~] department of
17 finance and administration."

18 SECTION 18. Section 13-1-37 NMSA 1978 (being Laws 1984,
19 Chapter 65, Section 10) is amended to read:

20 "13-1-37. DEFINITION--CENTRAL PURCHASING OFFICE.--
21 "Central purchasing office" means that office or officer within
22 a state agency or a local public body responsible for the
23 control of procurement of items of tangible personal property,
24 services or construction. "Central purchasing office" includes
25 the purchasing division of the [~~general services~~] department of

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1 finance and administration and the state purchasing agent."

2 SECTION 19. Section 13-1-86 NMSA 1978 (being Laws 1984,
3 Chapter 65, Section 59) is amended to read:

4 "13-1-86. DEFINITION--SECRETARY.--"Secretary" means the
5 secretary of [~~general services~~] finance and administration."

6 SECTION 20. Section 13-1-90 NMSA 1978 (being Laws 1984,
7 Chapter 65, Section 63) is amended to read:

8 "13-1-90. DEFINITION--STATE AGENCY.--"State agency" means
9 any department, commission, council, board, committee,
10 institution, legislative body, agency, government corporation,
11 educational institution or official of the executive,
12 legislative or judicial branch of the government of this state.
13 "State agency" includes the purchasing division of the [~~general~~
14 ~~services~~] department of finance and administration and the
15 state purchasing agent but does not include local public
16 bodies."

17 SECTION 21. Section 13-1-92 NMSA 1978 (being Laws 1984,
18 Chapter 65, Section 65) is amended to read:

19 "13-1-92. DEFINITION--STATE PURCHASING AGENT.--"State
20 purchasing agent" means the director of the purchasing division
21 of the [~~general services~~] department of finance and
22 administration."

23 SECTION 22. Section 13-1-95 NMSA 1978 (being Laws 1984,
24 Chapter 65, Section 68) is amended to read:

25 "13-1-95. PURCHASING DIVISION--CREATION--DIRECTOR IS

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1 STATE PURCHASING AGENT--APPOINTMENT--DUTIES.--

2 A. The "purchasing division" is created within the
3 [~~general services~~] department of finance and administration.

4 B. Subject to the authority of the secretary, the
5 state purchasing agent shall be the administrator and [~~chief~~
6 ~~executive~~] director of the purchasing division. The state
7 purchasing agent shall be appointed by the secretary with the
8 approval of the governor.

9 C. The purchasing division and state purchasing
10 agent shall be responsible for the procurement of services,
11 construction and items of tangible personal property for all
12 state agencies except as otherwise provided in the Procurement
13 Code and shall administer the Procurement Code for those state
14 agencies not excluded from the requirement of procurement
15 through the state purchasing agent.

16 D. The state purchasing agent shall have the
17 following additional authority and responsibility to:

18 (1) recommend procurement [~~regulations~~] rules
19 to the secretary;

20 (2) establish and maintain programs for the
21 development and use of procurement specifications and for the
22 inspection, testing and acceptance of services, construction
23 and items of tangible personal property;

24 (3) cooperate with the state budget division
25 of the department of finance and administration in the

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1 preparation of statistical data concerning the acquisition and
2 usage of all services, construction and items of tangible
3 personal property by state agencies;

4 (4) require state agencies to furnish reports
5 concerning usage, needs and stocks on hand of items of tangible
6 personal property and usage and needs for services or
7 construction;

8 (5) prescribe, with consent of the secretary,
9 forms to be used by state agencies to requisition and report
10 the procurement of items of tangible personal property,
11 services and construction;

12 (6) provide information to state agencies and
13 local public bodies concerning the development of
14 specifications, quality control methods and other procurement
15 information; and

16 (7) collect information concerning procurement
17 matters, quality and quality control of commonly used services,
18 construction and items of tangible personal property.

19 E. The state purchasing agent shall, upon the
20 request of the central purchasing office of a local public
21 body, procure a price agreement for the requested services,
22 construction or items of tangible personal property."

23 SECTION 23. Section 13-1-97.1 NMSA 1978 (being Laws 2009,
24 Chapter 107, Section 1) is amended to read:

25 "13-1-97.1. CONTRACT DATABASE.--

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1 A. The department of finance and administration,
2 the department of information technology, the department of
3 transportation and the general services department shall
4 jointly develop a database of all state contracts with a term
5 beginning on or after January 1, 2010 and having a value of
6 more than twenty thousand dollars (\$20,000) entered into
7 pursuant to the Procurement Code or otherwise within the
8 purview of any state agency. The [~~general services~~ department
9 of finance and administration shall coordinate the maintenance
10 of the database with the assistance of the other departments.

11 B. The [~~general services~~ department of finance and
12 administration shall make the database available to the public
13 on its online web site no later than January 1, 2010. The
14 database shall be searchable by contractor name, subject
15 matter, date, price or consideration, contract number,
16 amendments and other categories of information that the
17 departments identified in Subsection A of this section agree
18 are necessary to inform the public fully about state
19 contracts."

20 **SECTION 24.** Section 13-1-98 NMSA 1978 (being Laws 1984,
21 Chapter 65, Section 71, as amended) is amended to read:

22 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The
23 provisions of the Procurement Code shall not apply to:

24 A. procurement of items of tangible personal
25 property or services by a state agency or a local public body

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1 from a state agency, a local public body or external
2 procurement unit except as otherwise provided in Sections
3 13-1-135 through 13-1-137 NMSA 1978;

4 B. procurement of tangible personal property or
5 services for the governor's mansion and grounds;

6 C. printing and duplicating contracts involving
7 materials that are required to be filed in connection with
8 proceedings before administrative agencies or state or federal
9 courts;

10 D. purchases of publicly provided or publicly
11 regulated gas, electricity, water, sewer and refuse collection
12 services;

13 E. purchases of books and periodicals from the
14 publishers or copyright holders thereof;

15 F. travel or shipping by common carrier or by
16 private conveyance or to meals and lodging;

17 G. purchase of livestock at auction rings or to the
18 procurement of animals to be used for research and
19 experimentation or exhibit;

20 H. contracts with businesses for public school
21 transportation services;

22 I. procurement of tangible personal property or
23 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,
24 by the corrections industries division of the corrections
25 department pursuant to rules adopted by the corrections

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1 industries commission, which shall be reviewed by the
2 purchasing division of the [~~general services~~] department of of
3 finance and administration prior to adoption;

4 J. minor purchases not exceeding five thousand
5 dollars (\$5,000) consisting of magazine subscriptions,
6 conference registration fees and other similar purchases where
7 prepayments are required;

8 K. municipalities having adopted home rule charters
9 and having enacted their own purchasing ordinances;

10 L. the issuance, sale and delivery of public
11 securities pursuant to the applicable authorizing statute, with
12 the exception of bond attorneys and general financial
13 consultants;

14 M. contracts entered into by a local public body
15 with a private independent contractor for the operation, or
16 provision and operation, of a jail pursuant to Sections
17 33-3-26 and 33-3-27 NMSA 1978;

18 N. contracts for maintenance of grounds and
19 facilities at highway rest stops and other employment
20 opportunities, excluding those intended for the direct care and
21 support of persons with handicaps, entered into by state
22 agencies with private, nonprofit, independent contractors who
23 provide services to persons with handicaps;

24 O. contracts and expenditures for services or items
25 of tangible personal property to be paid or compensated by

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1 money or other property transferred to New Mexico law
2 enforcement agencies by the United States department of justice
3 drug enforcement administration;

4 P. contracts for retirement and other benefits
5 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

6 Q. contracts with professional entertainers;

7 R. contracts and expenditures for litigation
8 expenses in connection with proceedings before administrative
9 agencies or state or federal courts, including experts,
10 mediators, court reporters, process servers and witness fees,
11 but not including attorney contracts;

12 S. contracts for service relating to the design,
13 engineering, financing, construction and acquisition of public
14 improvements undertaken in improvement districts pursuant to
15 Subsection L of Section 3-33-14.1 NMSA 1978 and in county
16 improvement districts pursuant to Subsection L of Section
17 4-55A-12.1 NMSA 1978;

18 T. works of art for museums or for display in
19 public buildings or places;

20 U. contracts entered into by a local public body
21 with a person, firm, organization, corporation or association
22 or a state educational institution named in Article 12, Section
23 11 of the constitution of New Mexico for the operation and
24 maintenance of a hospital pursuant to Chapter 3, Article 44
25 NMSA 1978, lease or operation of a county hospital pursuant to

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1 the Hospital Funding Act or operation and maintenance of a
2 hospital pursuant to the Special Hospital District Act;

3 V. purchases of advertising in all media, including
4 radio, television, print and electronic;

5 W. purchases of promotional goods intended for
6 resale by the tourism department;

7 X. procurement of printing services for materials
8 produced and intended for resale by the cultural affairs
9 department;

10 Y. procurement by or through the public education
11 department from the federal department of education relating to
12 parent training and information centers designed to increase
13 parent participation, projects and initiatives designed to
14 improve outcomes for students with disabilities and other
15 projects and initiatives relating to the administration of
16 improvement strategy programs pursuant to the federal
17 Individuals with Disabilities Education Act; provided that the
18 exemption applies only to procurement of services not to exceed
19 two hundred thousand dollars (\$200,000);

20 Z. procurement of services from community
21 rehabilitation programs or qualified individuals pursuant to
22 the State Use Act;

23 AA. purchases of products or services for eligible
24 persons with disabilities pursuant to the federal
25 Rehabilitation Act of 1973;

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1 BB. procurement, by either the department of health
2 or Grant county or both, of tangible personal property,
3 services or construction that are exempt from the Procurement
4 Code pursuant to Section 9-7-6.5 NMSA 1978;

5 CC. contracts for investment advisory services,
6 investment management services or other investment-related
7 services entered into by the educational retirement board, the
8 state investment officer or the retirement board created
9 pursuant to the Public Employees Retirement Act;

10 DD. the purchase for resale by the state fair
11 commission of feed and other items necessary for the upkeep of
12 livestock; and

13 EE. contracts entered into by the crime victims
14 reparation commission to distribute federal grants to assist
15 victims of crime, including grants from the federal Victims of
16 Crime Act and the federal Violence Against Women Act."

17 SECTION 25. Section 13-1-125 NMSA 1978 (being Laws 1984,
18 Chapter 65, Section 98, as amended) is amended to read:

19 "13-1-125. SMALL PURCHASES.--

20 A. A central purchasing office shall procure
21 services, construction or items of tangible personal property
22 having a value not exceeding twenty thousand dollars (\$20,000)
23 in accordance with the applicable small purchase [~~regulations~~]
24 rules adopted by the secretary, a local public body or a
25 central purchasing office that has the authority to issue

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1 ~~[regulations]~~ rules.

2 B. Notwithstanding the requirements of Subsection A
3 of this section, a central purchasing office may procure
4 professional services having a value not exceeding fifty
5 thousand dollars (\$50,000), excluding applicable state and
6 local gross receipts taxes, except for the services of
7 landscape architects or surveyors for state public works
8 projects or local public works projects, in accordance with
9 professional services procurement ~~[regulations]~~ rules
10 promulgated by the department of finance and administration
11 ~~[the general services department]~~ or a central purchasing
12 office with the authority to issue ~~[regulations]~~ rules.

13 C. Notwithstanding the requirements of Subsection A
14 of this section, a state agency or a local public body may
15 procure services, construction or items of tangible personal
16 property having a value not exceeding ten thousand dollars
17 (\$10,000) by issuing a direct purchase order to a contractor
18 based upon the best obtainable price.

19 D. Procurement requirements shall not be
20 artificially divided so as to constitute a small purchase under
21 this section."

22 **SECTION 26.** Section 13-1-135.1 NMSA 1978 (being Laws
23 1995, Chapter 60, Section 2) is amended to read:

24 "13-1-135.1. RECYCLED CONTENT GOODS--COOPERATIVE
25 PROCUREMENT.--

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1 A. Beginning July 1, 1995, each central purchasing
2 office shall, whenever its price, quality, quantity,
3 availability and delivery requirements are met, purchase
4 recycled content goods through contracts established by the
5 purchasing division of the [~~general services~~] department of
6 finance and administration or with other central purchasing
7 offices.

8 B. For purposes of this section, "recycled content
9 goods" means supplies and materials composed in whole or in
10 part of recycled materials; provided that the recycled
11 materials content meets or exceeds the minimum content
12 standards required by bid specifications."

13 **SECTION 27.** Section 13-1-136 NMSA 1978 (being Laws 1984,
14 Chapter 65, Section 109) is amended to read:

15 "13-1-136. COOPERATIVE PROCUREMENT--REPORTS REQUIRED.--
16 The [~~general services department and the department of finance~~
17 ~~and administration shall notify the]~~ state purchasing agent
18 shall notify the secretary of finance and administration on or
19 before January 1 of each year of the cooperative procurement
20 agreements entered into by state agencies with local public
21 bodies or external procurement units during the preceding
22 fiscal year."

23 **SECTION 28.** Section 13-1C-3 NMSA 1978 (being Laws 2005,
24 Chapter 334, Section 3) is amended to read:

25 "13-1C-3. DEFINITIONS.--As used in the State Use Act:

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1 A. "central nonprofit agency" means a nonprofit
2 agency approved pursuant to rules of the council to facilitate
3 the equitable distribution of orders for the services of:

4 (1) qualified individuals; and

5 (2) community rehabilitation programs;

6 B. "community rehabilitation program" means a
7 nonprofit entity:

8 (1) that is organized under the laws of the
9 United States or this state, operated in the interest of
10 persons with disabilities and operated so that no part of the
11 income of which inures to the benefit of any shareholder or
12 other person;

13 (2) that complies with applicable occupational
14 health and safety standards as required by federal or state
15 law; and

16 (3) that, in the provision of services,
17 whether or not procured under the State Use Act, employs during
18 the state fiscal year at least seventy-five percent persons
19 with disabilities in direct labor for the provision of
20 services;

21 C. "council" means the New Mexico council for
22 purchasing from persons with disabilities;

23 D. "direct labor" means all work directly relating
24 to the provision of services, but not work required for or
25 relating to supervision, administration or inspection;

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1 E. "local public body" means a political
2 subdivision of the state and the political subdivision's
3 agencies, instrumentalities and institutions;

4 F. "persons with disabilities" means persons who
5 have a mental or physical impairment that constitutes or
6 results in a substantial impediment to employment as defined by
7 the federal Rehabilitation Act of 1973;

8 G. "qualified individual" means a person with a
9 disability who is a business owner, or a business that is
10 primarily owned and operated by persons with disabilities that
11 employs at least seventy-five percent persons with disabilities
12 in the provision of direct labor, which has been approved by
13 the council to provide services to state agencies and local
14 public bodies. A person who is receiving services pursuant to
15 an individualized plan of employment from the vocational
16 rehabilitation division of the public education department or
17 from the commission for the blind shall be presumed to be a
18 person with disability, as shall a person who is receiving
19 supplemental security income or social security benefits based
20 on disability;

21 H. "state agency" means a department, commission,
22 council, board, committee, institution, legislative body,
23 agency, government corporation, educational institution or
24 official of the executive, legislative or judicial branch of
25 government of this state; and

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1 I. "state purchasing agent" means the director of
2 the purchasing division of the [~~general services~~] department of
3 finance and administration."

4 SECTION 29. TEMPORARY PROVISION--TRANSFERS OF PROPERTY,
5 CONTRACTUAL OBLIGATIONS AND STATUTORY PROVISIONS--STATE
6 PERSONNEL OFFICE TO DEPARTMENT OF FINANCE AND ADMINISTRATION--
7 RULES AND STATUTORY REVIEW REQUIRED.--

8 A. On the effective date of this act, all
9 functions, appropriations, money, records, furniture, equipment
10 and other property of the state personnel office are
11 transferred to the department of finance and administration.

12 B. On the effective date of this act, contractual
13 obligations of the state personnel office shall be binding on
14 the department of finance and administration.

15 C. On the effective date of this act, statutory
16 references to the state personnel office shall be deemed to be
17 references to the state personnel division of the department of
18 finance and administration.

19 D. Rules of the personnel board shall be deemed to
20 be rules of the state personnel division of the department of
21 finance and administration until amended or repealed. The
22 department shall review the state personnel rules and statutes
23 pertaining to state personnel within one year of the effective
24 date of this act and shall report to the governor and the
25 legislature on changes that are necessary to make the state

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1 personnel system equitable, effective, responsive and
2 accountable for a modern, well-qualified and responsible state
3 work force. Rules that are in conflict with state law shall be
4 repealed or shall be suspended until the legislature has been
5 given the opportunity to change the law.

6 SECTION 30. TEMPORARY PROVISION--TRANSFERS OF PROPERTY,
7 CONTRACTUAL OBLIGATIONS AND STATUTORY PROVISIONS--PURCHASING
8 DIVISION TO DEPARTMENT OF FINANCE AND ADMINISTRATION--RULES AND
9 STATUTORY REVIEW REQUIRED.--

10 A. On the effective date of this act, all
11 functions, appropriations, money, records, furniture, equipment
12 and other property of the purchasing division of the general
13 services department are transferred to the department of
14 finance and administration.

15 B. On the effective date of this act, contractual
16 obligations of the purchasing division of the general services
17 department shall be binding on the department of finance and
18 administration.

19 C. On the effective date of this act, statutory
20 references to the purchasing division of the general services
21 department shall be deemed to be references to the purchasing
22 division of the department of finance and administration.

23 D. Rules of the purchasing division of the general
24 services department pertaining to purchasing shall be deemed to
25 be rules of the department of finance and administration until

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1 amended or repealed. The department of finance and
2 administration shall review the procurement rules and statutes
3 pertaining to procurement within one year of the effective date
4 of this act and shall report to the governor and the
5 legislature on changes that are necessary to make the
6 procurement system more efficient, cost-effective, streamlined
7 and accountable. Rules that are in conflict with state law
8 shall be repealed or shall be suspended until the legislature
9 has been given the opportunity to change the law.

10 SECTION 31. TEMPORARY PROVISION--STATUTORY REFERENCES TO
11 SECRETARY OF GENERAL SERVICES.--On the effective date of this
12 act, statutory references to the secretary of general services
13 shall be deemed to be references to the superintendent of
14 general services.

15 SECTION 32. REPEAL.--Section 10-9-11 NMSA 1978 (being
16 Laws 1977, Chapter 247, Section 47, as amended) is repealed.

17 SECTION 33. CONTINGENT RECOMPILATION.--If Sections 9-6-12
18 through 9-6-14 NMSA 1978 (being Laws 2003, Chapter 126,
19 Sections 1 through 3) are not repealed by another act of the
20 fiftieth legislature, first session, the compiler is instructed
21 to recompile them in the Cultural Affairs Department Act or
22 other suitable location in the NMSA 1978.

23 SECTION 34. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2011.