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AN ACT

RELATING TO INFORMATION TECHNOLOGY; TERMINATING THE  
INFORMATION TECHNOLOGY COMMISSION; AMENDING, REPEALING AND  
ENACTING SECTIONS OF THE NMSA 1978.

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

**SECTION 1. TERMINATION OF AGENCY LIFE--DELAYED**

REPEAL.--The information technology commission is terminated  
July 1, 2017 pursuant to the provisions of the Sunset Act.  
The commission shall continue to operate according to the  
provisions of the Department of Information Technology Act  
until July 1, 2018. Effective July 1, 2018, Section 9-27-9  
NMSA 1978 (being Laws 2007, Chapter 290, Section 9, as  
amended) is repealed.

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

**"9-27-6. 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 the secretary's duties, the  
secretary has every power expressly enumerated in the laws,  
whether granted to the secretary or the department or any

1 division of the department, except where authority conferred  
2 upon any division is explicitly exempted from the secretary's  
3 authority by statute. In accordance with these provisions,  
4 the secretary shall:

5 (1) exercise general supervisory and  
6 appointing authority over all department employees, subject  
7 to any applicable personnel laws and regulations;

8 (2) delegate authority to subordinates as  
9 the secretary deems necessary and appropriate, clearly  
10 delineating such delegated authority and the limitations  
11 thereto;

12 (3) organize the department into those  
13 organizational units the secretary deems will enable it to  
14 function most efficiently, subject to provisions of law  
15 requiring or establishing specific organizational units;

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

20 (5) take administrative action by issuing  
21 orders and instructions, not inconsistent with the law, to  
22 ensure implementation of and compliance with the provisions  
23 of law for whose administration or execution the secretary is  
24 responsible and to enforce those orders and instructions by  
25 appropriate administrative action in the courts;

1 (6) conduct research and studies that will  
2 improve the operations of the department and the provision of  
3 services to state agencies and the residents of the state;

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

9 (8) prepare an annual budget of the  
10 department;

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

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

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

17 (c) resolve by agreement the manner and  
18 extent to which the department shall provide budgeting,  
19 recordkeeping and related clerical assistance to  
20 administratively attached agencies; and

21 (10) appoint for each division a "director".  
22 These appointed positions are exempt from the provisions of  
23 the Personnel Act. Persons appointed to these positions  
24 shall serve at the pleasure of the secretary.

25 C. As the chief information officer, the secretary HB 231  
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1 shall:

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

7 (2) approve executive agency information  
8 technology requests for proposals and other executive agency  
9 requests that are subject to the Procurement Code, prior to  
10 final approval;

11 (3) promulgate rules for oversight of  
12 information technology procurement;

13 (4) approve executive agency information  
14 technology contracts and amendments to those contracts,  
15 including emergency procurements, sole source contracts and  
16 price agreements, prior to approval by the department of  
17 finance and administration;

18 (5) develop and implement procedures to  
19 standardize data elements, determine data ownership and  
20 ensure data sharing among executive agencies;

21 (6) verify compliance with state information  
22 architecture and the state information technology strategic  
23 plan before approving documents referred to in Paragraphs (2)  
24 and (4) of this subsection;

25 (7) monitor executive agency compliance with

1 its agency plan, the state information technology strategic  
2 plan and state information architecture and report to the  
3 governor, executive agency management and the legislative  
4 finance committee on noncompliance;

5 (8) develop information technology cost  
6 recovery mechanisms and information systems rate and fee  
7 structures of state agencies and other public or private  
8 sector providers and make recommendations to the information  
9 technology rate committee;

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

12 (10) ensure the use of existing public or  
13 private information technology or telecommunications  
14 resources when the use is practical, efficient, effective and  
15 financially prudent and is in compliance with the Procurement  
16 Code;

17 (11) review appropriation requests related  
18 to executive agency information technology requests to ensure  
19 compliance with agency plans and the state information  
20 technology strategic plan and make written recommendations by  
21 November 14 of each year to the department of finance and  
22 administration and by November 21 of each year to the  
23 legislative finance committee and the appropriate interim  
24 legislative committee; provided, however, that the  
25 recommendations to the legislative committees have been

1 agreed to by the department of information technology and the  
2 department of finance and administration;

3 (12) promulgate rules to ensure that  
4 information technology projects satisfy criteria established  
5 by the secretary and are phased in with funding released in  
6 phases contingent upon successful completion of the prior  
7 phase;

8 (13) provide oversight of information  
9 technology projects, including ensuring adequate risk  
10 management, disaster recovery and business continuity  
11 practices and monitoring compliance with strategies for  
12 information technology projects that affect multiple  
13 agencies;

14 (14) conduct reviews of information  
15 technology projects and provide written reports to the  
16 appropriate legislative oversight bodies;

17 (15) conduct background checks on department  
18 employees and prospective department employees that have or  
19 will have administrative access or authority to sensitive,  
20 confidential or private information or the ability to alter  
21 systems, networks or other information technology hardware or  
22 software; and

23 (16) perform any other information  
24 technology function assigned by the governor.

25 D. Each executive agency shall submit an agency

1 information technology plan to the secretary in the form and  
2 detail required by the secretary. Each executive agency  
3 shall conduct background checks on agency or prospective  
4 agency employees that have or will have administrative access  
5 or authority to alter systems, networks or other information  
6 technology hardware or software.

7 E. A state agency that receives an invoice from  
8 the department for services rendered to the agency shall have  
9 thirty days from receipt of the invoice to pay the department  
10 or to notify the department if the amount of the invoice is  
11 in dispute. The agency shall have fifteen days from its  
12 notification of dispute to the department to present its  
13 reasons in writing and request an adjustment. The department  
14 shall have fifteen days from its receipt of the reasons for  
15 dispute to notify the agency of its decision. If the  
16 department and the agency do not agree on a resolution, the  
17 secretary of finance and administration shall make a  
18 determination on the amount owed by the agency to the  
19 department. If the agency has not paid the department or  
20 notified the department of a dispute within thirty days of  
21 receipt of the invoice, the department shall notify the  
22 department of finance and administration and request that the  
23 department of finance and administration transfer funds from  
24 the agency to the department of information technology to  
25 satisfy the agency's obligation.

1           F. The secretary, as chief information officer,  
2 shall prepare a state information technology strategic plan  
3 for the executive branch and update it at least once every  
4 three years, which plan shall be available to agencies by  
5 July 31 of each year. The plan shall comply with the  
6 provisions of the Department of Information Technology Act  
7 and provide for the:

8                   (1) interchange of information related to  
9 information technology among executive agencies;

10                   (2) coordination among executive agencies in  
11 the development and maintenance of information technology  
12 systems; and

13                   (3) protection of the privacy and security  
14 of individual information as well as of individuals using the  
15 state's information technology systems.

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

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



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

7 (1) information technology security;

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

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

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

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

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

23 Notice of the subject matter of the rule, the action proposed  
24 to be taken, the time and place of the hearing, the manner in  
25 which interested persons may present their views and the

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

9 SECTION 3. Section 9-27-11 NMSA 1978 (being Laws 2008,  
10 Chapter 84, Section 2, as amended) is amended to read:

11 "9-27-11. EQUIPMENT REPLACEMENT PLANS--EQUIPMENT  
12 REPLACEMENT REVOLVING FUNDS.--

13 A. In order to plan for the expenditure of capital  
14 investments necessary to provide goods and services to the  
15 state and its agencies and to local public bodies and other  
16 enterprise customers, the department shall establish and  
17 maintain an equipment replacement plan for each of the  
18 department's enterprise functions. No later than September 1  
19 of each year, the plans shall be submitted to the department  
20 of finance and administration and the legislature,  
21 accompanied by a reconciliation report of the preceding  
22 fiscal year reflecting financial activity in each of the  
23 equipment replacement revolving funds established pursuant to  
24 this section.

25 B. Upon the request of the secretary, the state

1 treasurer shall establish in the state treasury such  
2 "equipment replacement revolving funds" as are necessary to  
3 administer each of the department's enterprise functions.  
4 The revolving funds shall consist of legislative  
5 appropriations to the funds and transfers made to the funds  
6 pursuant to Subsections C and D of this section. Income from  
7 investment of the revolving funds shall be credited back to  
8 the funds, and money in the funds shall not revert at the end  
9 of a fiscal year. Expenditures from the funds shall only be  
10 made pursuant to an appropriation from the legislature and  
11 only for the purpose of acquiring and replacing capital  
12 equipment and associated software used to provide enterprise  
13 services pursuant to the department's equipment replacement  
14 plans.

15 C. The department shall record amounts due to the  
16 equipment replacement revolving funds each fiscal year, based  
17 on the calculation of amortization and depreciation  
18 applicable to each enterprise service as reflected in the  
19 department's published cost structures for calculation of  
20 rates for services. Transfers to the funds shall be made  
21 from the operating funds of each enterprise in amounts that  
22 reconcile with the recorded amounts due. The recording of  
23 amounts due to the equipment replacement revolving funds and  
24 the transfer of the funds shall be consistent with generally  
25 accepted accounting principles.

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D. The department may make initial transfers from  
its operating funds to establish the beginning fund balances  
as of July 1, 2008." \_\_\_\_\_