

HOUSE BILL 345

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

INTRODUCED BY

David C. Chavez

AN ACT

RELATING TO RULEMAKING; REQUIRING STATE AGENCIES TO CITE  
SPECIFIC STATUTORY AUTHORITY FOR RULES AND ADMINISTRATIVE  
DIRECTIVES THEY PROPOSE TO ENACT.

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

**SECTION 1.** Section 8-8-4 NMSA 1978 (being Laws 1998,  
Chapter 108, Section 4) is amended to read:

"8-8-4. COMMISSION--GENERAL POWERS AND DUTIES.--

A. The commission shall administer and enforce the  
laws with which it is charged and has every power conferred by  
law.

B. The commission may:

(1) subject to legislative appropriation,  
appoint and employ such professional, technical and clerical  
assistance as it deems necessary to assist it in performing its

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1 powers and duties;

2 (2) delegate authority to subordinates as it  
3 deems necessary and appropriate, clearly delineating such  
4 delegated authority and any limitations;

5 (3) retain competent attorneys to handle the  
6 legal matters of the commission and give advice and counsel in  
7 regard to any matter connected with the duties of the  
8 commission and, in the discretion of the commission, to  
9 represent the commission in any legal proceeding;

10 (4) organize into organizational units as  
11 necessary to enable it to function most efficiently, subject to  
12 provisions of law requiring or establishing specific  
13 organizational units;

14 (5) take administrative action by issuing  
15 orders not inconsistent with law to assure implementation of  
16 and compliance with the provisions of law for which the  
17 commission is responsible and to enforce those orders by  
18 appropriate administrative action and court proceedings;

19 (6) conduct research and studies to improve  
20 the commission's operations or the provision of services to the  
21 citizens of New Mexico;

22 (7) conduct investigations as necessary to  
23 carry out the commission's responsibilities;

24 (8) apply for and accept grants and donations  
25 in the name of the state to carry out its powers and duties;

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1 (9) enter into contracts to carry out its  
2 powers and duties;

3 (10) adopt such reasonable [~~administrative~~  
4 ~~regulatory and~~] procedural rules as may be necessary [~~or~~  
5 ~~appropriate~~] to carry out [~~its powers and duties~~] the  
6 provisions of the Public Regulation Commission Act. For any  
7 other rule or administrative directive promulgated, adopted or  
8 amended, the commission shall cite the specific statutory  
9 provisions warranting the rule or administrative directive;

10 (11) adopt a rule or an administrative  
11 directive only upon specific statutory authorization regarding  
12 the content of the rule or administrative directive;

13 [~~(11)~~] (12) cooperate with tribal and pueblo  
14 governments on topics over which the commission and the other  
15 governments have jurisdiction and conduct joint investigations,  
16 hold joint hearings and issue joint or concurrent orders as  
17 appropriate; and

18 [~~(12)~~] (13) apply to the district court for  
19 injunctions to prevent violations of any laws that it  
20 administers or rules or orders adopted pursuant to those laws.

21 C. The commission shall:

22 (1) prepare an annual budget for submission to  
23 the legislature;

24 (2) provide for surety bond coverage for all  
25 employees of the commission as provided in the Surety Bond Act

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1 and pay the costs of such bonds;

2 (3) adopt rules to streamline the resolution  
3 of cases before it when appropriate by:

- 4 (a) the use of hearing examiners;  
5 (b) the taking of evidence with the  
6 least delay practicable;  
7 (c) limiting repetitious testimony; and  
8 (d) adopting procedures for resolving  
9 cases in ways other than by trial-type hearings when  
10 appropriate, including consent calendars, conferences,  
11 settlements, mediation, arbitration and other alternative  
12 dispute resolution methods and the use of staff decisions; and

13 (4) provide a toll-free telephone number and  
14 publish it and the commission's general telephone number in  
15 local telephone directories.

16 D. A majority of the commission constitutes a  
17 quorum for the transaction of business; provided, however, that  
18 a majority vote of the commission is needed for a final  
19 decision of the commission."

20 SECTION 2. Section 9-1-5 NMSA 1978 (being Laws 1977,  
21 Chapter 248, Section 5) is amended to read:

22 "9-1-5. SECRETARY--DUTIES AND GENERAL POWERS.--

23 A. The secretary is responsible to the governor for  
24 the operation of the department. It is ~~[his]~~ the secretary's  
25 duty to manage all operations of the department and to

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1 administer and enforce the laws with which [~~he~~] the secretary  
2 or the department is charged.

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

10 (1) except as otherwise provided in [~~this~~] the  
11 Executive Reorganization Act, exercise general supervisory and  
12 appointing authority over all department employees, subject to  
13 any applicable personnel laws and [~~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;

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~~] for whose administration or execution [~~of which~~  
5 ~~he~~] the secretary is responsible and to enforce those orders  
6 and instructions by appropriate administrative action or  
7 actions in 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 administratively attached agencies and adjunct  
20 agencies, in order to:

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

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,  
2 recordkeeping and related clerical assistance to  
3 administratively attached agencies; and

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

9 [~~(11) give bond in the penal sum of twenty-~~  
10 ~~five thousand dollars (\$25,000) and require directors to each~~  
11 ~~give bond in the penal sum of ten thousand dollars (\$10,000)~~  
12 ~~conditioned upon the faithful performance of duties, as~~  
13 ~~provided in the Surety Bond Act. The department shall pay the~~  
14 ~~costs of such bonds; and~~

15 [~~(12) require performance bonds of such~~  
16 ~~department employees and officers as he deems necessary, as~~  
17 ~~provided in the Surety Bond Act. The department shall pay the~~  
18 ~~costs of such bonds.]~~

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

24 D. Where functions of departments overlap or a  
25 function assigned to one department could better be performed

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1 by another department, a secretary may recommend appropriate  
2 legislation to the next session of the legislature for its  
3 approval.

4 E. The secretary may make and adopt such reasonable  
5 [~~and~~] procedural rules [~~and regulations~~] as may be necessary to  
6 carry out the [~~duties of the department and its divisions~~]  
7 provisions of the act creating the department headed by the  
8 secretary. For any other rule or administrative directive  
9 promulgated, adopted or amended, the secretary shall cite the  
10 specific statutory provisions warranting the rule or  
11 administrative directive. The secretary may adopt a rule or an  
12 administrative directive only upon specific statutory  
13 authorization regarding the content of the rule or  
14 administrative directive. Statutory language granting  
15 rulemaking authority or generally describing the powers and  
16 functions of an agency shall not be construed to extend further  
17 than implementing or interpreting the specific powers and  
18 duties conferred by the enabling statute. No rule or  
19 [~~regulation~~] administrative directive promulgated by the  
20 director of any division in carrying out the functions and  
21 duties of the division shall be effective until approved by the  
22 secretary unless otherwise provided by statute. Unless  
23 otherwise provided by statute, no [~~regulation~~] rule or  
24 administrative directive affecting any person or agency outside  
25 the department shall be adopted, amended or repealed without a

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

17 F. If this section conflicts with the powers and  
18 duties specifically given by statute to a particular secretary,  
19 the specific powers and duties shall control. If this section  
20 conflicts with other statutes specifically limiting the powers  
21 of a secretary, the specific limitations shall control."

22 SECTION 3. Section 9-2A-7 NMSA 1978 (being Laws 1992,  
23 Chapter 57, Section 7, as amended) is amended to read:

24 "9-2A-7. SECRETARY--DUTIES AND GENERAL POWERS.--

25 A. The secretary is responsible to the governor for

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1 the operation of the department. It is the secretary's duty to  
2 manage all operations of the department and to administer and  
3 enforce the laws with which [~~he~~] the secretary or the  
4 department is charged.

5 B. To perform [~~his~~] the secretary's duties, the  
6 secretary has every power expressly enumerated in the law,  
7 whether granted to the secretary, the department or any  
8 division of the department, except when any division is  
9 explicitly exempted from the secretary's power by statute. In  
10 accordance with these provisions, the secretary shall:

11 (1) except as otherwise provided in the  
12 Children, Youth and Families Department Act, exercise general  
13 supervisory and appointing power over all department employees,  
14 subject to applicable personnel laws and [~~regulations~~] rules;

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

18 (3) organize the department into  
19 organizational units as necessary to enable it to function most  
20 efficiently, subject to any provisions of law requiring or  
21 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 law, to assure  
3 implementation of and compliance with the provisions of law for  
4 which administration or execution [~~he~~] the secretary is  
5 responsible and to enforce those orders and instructions by  
6 appropriate administrative action in the courts;

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

10 (7) provide courses of instruction and  
11 practical training for employees of the department and other  
12 persons involved in the administration of programs with the  
13 objectives of improving the operations and efficiency of  
14 administration and of promoting comprehensive, coordinated,  
15 culturally sensitive services that address the whole child;

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

18 (9) provide cooperation, at the request of  
19 administratively attached agencies and adjunct agencies, in  
20 order to:

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

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,  
2 recordkeeping and related clerical assistance to  
3 administratively attached agencies. [~~and~~

4 ~~(10) provide for surety bond coverage for all~~  
5 ~~employees of the department as provided in the Surety Bond Act.~~  
6 ~~The department shall pay the costs of such bonds.]~~

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

12 D. The secretary may make and adopt such reasonable  
13 [~~and~~] procedural rules [~~and regulations~~] as may be necessary to  
14 carry out the [~~duties of the department and its divisions~~]  
15 provisions of the Children, Youth and Families Department Act.  
16 For any other rule or administrative directive promulgated,  
17 adopted or amended, the secretary shall cite the specific  
18 statutory provisions warranting the rule or administrative  
19 directive. The secretary may adopt a rule or an administrative  
20 directive only upon specific statutory authorization regarding  
21 the content of the rule or administrative directive. No rule  
22 or [~~regulation~~] administrative directive promulgated by the  
23 director of any division in carrying out the functions and  
24 duties of the division shall be effective until approved by the  
25 secretary. Unless otherwise provided by statute, no

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1     ~~[regulation]~~ rule or administrative directive affecting any  
2     person or agency outside the department shall be adopted,  
3     amended or repealed without a public hearing on the proposed  
4     action before the secretary or a hearing officer designated by  
5     the secretary. The public hearing shall be held in Santa Fe  
6     unless otherwise permitted by statute. Notice of the subject  
7     matter of the ~~[regulation]~~ rule or administrative directive,  
8     the action proposed to be taken, the time and place of the  
9     hearing, the manner in which interested persons may present  
10    their views and the method by which copies of the proposed  
11    ~~[regulation]~~ rule or administrative directive or proposed  
12    amendment or repeal of an existing ~~[regulation]~~ rule or  
13    administrative directive may be obtained shall be published  
14    once at least thirty days prior to the hearing date in a  
15    newspaper of general circulation and mailed at least thirty  
16    days prior to the hearing date to all persons who have made a  
17    written request for advance notice of hearing. All rules and  
18    ~~[regulations]~~ administrative directives shall be filed in  
19    accordance with the State Rules Act.

20           E. If the secretary certifies to the secretary of  
21    finance and administration and gives contemporaneous notice of  
22    such certification through the human services register that the  
23    department has insufficient state funds to operate any of the  
24    programs it administers and that reductions in services or  
25    benefit levels are necessary, the secretary may engage in

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1 interim rulemaking. Notwithstanding any provision to the  
2 contrary in the State Rules Act, interim rulemaking shall be  
3 conducted pursuant to Subsection D of this section, except:

4 (1) the period of notice of public hearing  
5 shall be fifteen days;

6 (2) the department shall send individual  
7 notices of the interim rulemaking and of the public hearing to  
8 affected providers and beneficiaries;

9 (3) rules and ~~[regulations]~~ administrative  
10 directives promulgated ~~[under]~~ pursuant to the provisions of  
11 this subsection shall be in effect not less than five days  
12 after the public hearing;

13 (4) rules and ~~[regulations]~~ administrative  
14 directives promulgated under this subsection shall not be in  
15 effect for more than ninety days; and

16 (5) if final rules ~~[and regulations]~~ or  
17 administrative directives are necessary to replace the interim  
18 rules ~~[and regulations]~~ or administrative directives, the  
19 department shall give notice of intent to promulgate final  
20 rules ~~[and regulations]~~ or administrative directives at the  
21 time of notice herein. The final rules ~~[and regulations]~~ or  
22 administrative directives shall be promulgated not more than  
23 forty-five days after the public hearing and filed in  
24 accordance with the State Rules Act."

25 SECTION 4. Section 9-3-5 NMSA 1978 (being Laws 1977,

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1 Chapter 257, Section 6, as amended) is amended to read:

2 "9-3-5. SECRETARY--DUTIES AND GENERAL POWERS.--

3 A. The secretary of corrections is responsible to  
4 the governor for the operation of the corrections department.  
5 It is [~~his~~] the secretary's duty to manage all operations of  
6 the department and to administer and enforce the laws with  
7 which [~~he~~] the secretary or the department is charged.

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

15 (1) except as otherwise provided in the  
16 Corrections Department Act, exercise general supervisory and  
17 appointing authority over all department employees, subject to  
18 any applicable personnel laws and [~~regulations~~] rules;

19 (2) delegate authority to subordinates as [~~he~~]  
20 the secretary deems necessary and appropriate, clearly  
21 delineating such delegated authority and the limitations  
22 thereto;

23 (3) organize the department into those  
24 organizational units [~~he~~] that the secretary deems will enable  
25 it to function most efficiently, subject to any provisions of

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1 law requiring or establishing specific organizational units;

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

6 (5) take administrative action by issuing  
7 orders and instructions, not inconsistent with the law, to  
8 assure implementation of and compliance with the provisions of  
9 law for whose administration or execution [~~he~~] the secretary is  
10 responsible and to enforce those orders and instructions by  
11 appropriate administrative action or actions in the courts;

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

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

20 (8) prepare an annual budget of the  
21 department;

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

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

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

3 (c) resolve by agreement the manner and  
4 extent to which the department shall provide budgeting,  
5 recordkeeping and related clerical assistance to  
6 administratively attached agencies; and

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

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

14 ~~(12) require performance bonds of such~~  
15 ~~department employees and officers as he deems necessary, as~~  
16 ~~provided in the Surety Bond Act. The department shall pay the~~  
17 ~~costs of the 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 United States government  
21 funds, available to the department to carry out its programs,  
22 duties or services.

23 D. Where functions of departments overlap or a  
24 function assigned to one department could better be performed  
25 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 [~~and~~] procedural rules [~~and regulations~~] as may be necessary to  
5 carry out the [~~duties of the department and its divisions~~]  
6 provisions of the Corrections Department Act. For any other  
7 rule or administrative directive promulgated, adopted or  
8 amended, the secretary shall cite the specific statutory  
9 provisions warranting the rule or administrative directive.  
10 The secretary may adopt a rule or an administrative directive  
11 only upon specific statutory authorization regarding the  
12 content of the rule or administrative directive. No rule or  
13 [~~regulation~~] administrative directive promulgated by the  
14 director of any division in carrying out the functions and  
15 duties of the division shall be effective until approved by the  
16 secretary. Unless otherwise provided by statute, no  
17 [~~regulation~~] rule or administrative directive affecting any  
18 person or agency outside the department shall be adopted,  
19 amended or repealed without a public hearing on the proposed  
20 action before the secretary or a hearing officer designated by  
21 [~~him~~] the secretary. The public hearing shall be held in Santa  
22 Fe unless otherwise permitted by statute. Notice of the  
23 subject matter of the [~~regulation~~] rule or administrative  
24 directive, the action proposed to be taken, the time and place  
25 of the hearing, the manner in which interested persons may

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1 present their views and the method by which copies of the  
2 proposed ~~[regulation]~~ rule or administrative directive or  
3 proposed amendment or repeal of an existing ~~[regulation]~~ rule  
4 or administrative directive may be obtained shall be published  
5 once at least thirty days prior to the hearing date in a  
6 newspaper of general circulation and mailed at least thirty  
7 days prior to the hearing date to all persons who have made a  
8 written request for advance notice of hearing. All rules and  
9 ~~[regulations]~~ administrative directives shall be filed in  
10 accordance with the State Rules Act.

11 F. Behavioral health services, including mental  
12 health and substance abuse services, provided by the department  
13 for persons under the department's supervision shall be in  
14 compliance with the requirements of Section 9-7-6.4 NMSA 1978."

15 SECTION 5. Section 9-4A-6 NMSA 1978 (being Laws 2004,  
16 Chapter 25, Section 6, as amended) is amended to read:

17 "9-4A-6. SECRETARY--DUTIES AND GENERAL POWERS.--

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

23 B. To perform the secretary's duties, the secretary  
24 has every power expressly enumerated in the laws, whether  
25 granted to the secretary or the department, or any division of

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

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

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

12 (3) organize the department into those  
13 organizational units the secretary deems will enable it to  
14 function most efficiently, subject to any 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 of  
23 law for whose administration or execution the secretary is  
24 responsible, and to enforce those orders and instructions by  
25 appropriate administrative action or actions in the courts;

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1 (6) conduct research and studies that will  
2 improve the operations of the department and the provision of  
3 services to the citizens 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 the  
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 of  
14 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, with the governor's consent, for  
22 each division, a "director". These appointed positions are  
23 exempt from the provisions of the Personnel Act. Persons  
24 appointed to these positions shall serve at the pleasure of the  
25 secretary.

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C. The secretary may:

(1) 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; and

(2) acquire by purchase, gift, endowment or legacy real or personal property and hold title to that property in the name of the department for the purpose of promoting, encouraging and supporting the performing arts in New Mexico. Property acquired pursuant to this paragraph shall be held under the control and authority of the ~~[cultural affairs]~~ department.

D. Where functions of departments overlap, or a function assigned to one department could better be performed by another department, a 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]~~ provisions of the Cultural Affairs Department Act. For any other rule or administrative directive promulgated, adopted or amended, the secretary shall cite the specific statutory provisions warranting the rule or administrative directive. The

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

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

3           "9-6-5. SECRETARY--DUTIES AND GENERAL POWERS.--

4           A. The secretary of finance and administration is  
5 responsible to the governor for the operation of the  
6 department of finance and administration. It is [~~his~~] the  
7 secretary's duty to manage all operations of the department  
8 and to administer and enforce the laws with which [~~he~~] the  
9 secretary or the department is charged.

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

17                   (1) except as otherwise provided in the  
18 Department of Finance and Administration Act, exercise  
19 general supervisory and appointing authority over all  
20 department employees, subject to any applicable personnel  
21 laws and [~~regulations~~] rules;

22                   (2) delegate authority to subordinates as  
23 [~~he~~] the secretary deems necessary and appropriate, clearly  
24 delineating such delegated authority and the limitations  
25 thereto;

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

6 (4) within the limitations of available  
7 appropriations and applicable laws, employ and fix the  
8 compensation of those persons necessary to discharge [~~his~~]  
9 the secretary's duties;

10 (5) take administrative action by issuing  
11 orders and instructions, not inconsistent with the law, to  
12 assure implementation of and compliance with the provisions  
13 of law with the administration or execution of which [~~he~~] the  
14 secretary is responsible, and to enforce those orders and  
15 instructions by appropriate administrative action or actions  
16 in the courts;

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

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

25 (8) prepare an annual budget of the

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1 department;

2 (9) provide cooperation, at the request of  
3 heads of administratively attached agencies and adjunct  
4 agencies, in order to:

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

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

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

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

18 (11) serve as, or designate the deputy  
19 secretary to serve as, executive officer of the state board  
20 of finance.

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

24 ~~(13) require faithful performance or other~~  
25 ~~fidelity bonds of such department employees and officers as~~

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1 ~~he deems necessary, as provided in the Surety Bond Act. The~~  
2 ~~department shall pay the costs of such bonds.]~~

3 C. The secretary may apply for and receive, with  
4 the governor's approval, in the name of the department, any  
5 public or private funds, including but not limited to United  
6 States government funds, available to the department to carry  
7 out its programs, duties or services.

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

13 E. The secretary may make and adopt such  
14 reasonable ~~[administrative and]~~ procedural rules ~~[and~~  
15 ~~regulations]~~ as may be necessary to carry out the ~~[duties of~~  
16 ~~the department and its divisions]~~ provisions of the  
17 Department of Finance and Administration Act. For any other  
18 rule or administrative directive promulgated, adopted or  
19 amended, the secretary shall cite the specific statutory  
20 provisions warranting the rule or administrative directive.  
21 The secretary may adopt a rule or an administrative directive  
22 only upon specific statutory authorization regarding the  
23 content of the rule or administrative directive. No rule or  
24 ~~[regulation]~~ administrative directive promulgated by the  
25 director of any division or office in carrying out the

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

23 SECTION 7. Section 9-7-6 NMSA 1978 (being Laws 1977,  
24 Chapter 253, Section 7, as amended) is amended to read:

25 "9-7-6. SECRETARY--DUTIES AND GENERAL POWERS.--

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1           A. The secretary is responsible to the governor  
2 for the operation of the department. It is [~~his~~] the  
3 secretary's duty to manage all operations of the department  
4 and to administer and enforce the laws with which [~~he~~] the  
5 secretary or the department is charged.

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

13                   (1) except as otherwise provided in the  
14 Department of Health Act, exercise general supervisory and  
15 appointing authority over all department employees, subject  
16 to any applicable personnel laws and [~~regulations~~] rules;

17                   (2) delegate authority to subordinates as  
18 [~~he~~] the secretary deems necessary and appropriate, clearly  
19 delineating such delegated authority and the limitations  
20 thereto;

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

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

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

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

15 (7) conduct quality assurance and quality  
16 improvement activities;

17 (8) provide courses of instruction and  
18 practical training for employees of the department and other  
19 persons involved in the administration of programs with the  
20 objective of improving the operations and efficiency of  
21 administration;

22 (9) prepare an annual budget of the  
23 department; and

24 (10) appoint, with the governor's consent, a  
25 "director" for each division. These appointed positions are

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1 exempt from the provisions of the Personnel Act. Persons  
2 appointed to these positions shall serve at the pleasure of  
3 the secretary.

4 ~~[(11) give bond in the penal sum of twenty-~~  
5 ~~five thousand dollars (\$25,000) and require directors to each~~  
6 ~~give bond in the penal sum of ten thousand dollars (\$10,000)~~  
7 ~~conditioned upon the faithful performance of duties, as~~  
8 ~~provided in the Surety Bond Act. The department shall pay~~  
9 ~~the costs of those bonds; and~~

10 ~~(12) require performance bonds of such~~  
11 ~~department employees and officers as he deems necessary, as~~  
12 ~~provided in the Surety Bond Act. The department shall pay~~  
13 ~~the costs of those bonds.]~~

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

19 D. The secretary shall be responsible for  
20 providing appropriate educational programs for all school-age  
21 persons, as defined in Section 22-1-2 NMSA 1978, who are  
22 clients, as defined in Section 43-1-3 NMSA 1978, of  
23 institutions under ~~[his]~~ the secretary's authority as  
24 follows:

25 (1) ~~[he]~~ the secretary shall arrange with

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1 school districts for the enrollment of all school-age  
2 residents of institutions under [~~his~~] the secretary's  
3 authority who have been evaluated and recommended for  
4 placement in a public school according to the provisions of  
5 the Department of Health Education Act. [~~He~~] The secretary  
6 shall notify the [~~superintendent of public instruction~~]  
7 secretary of public education prior to public school  
8 enrollment of any school-age resident under [~~his~~] the  
9 secretary's of health's authority; and

10 (2) [~~he~~] the secretary shall provide  
11 educational programs, in accordance with the special  
12 education rules of the [~~state board of~~] public education  
13 department, for school-age persons who are clients of  
14 institutions under [~~his~~] the secretary's authority but who  
15 are enrolled in a public school by:

16 (a) using the facilities and personnel  
17 of the department;

18 (b) contracting with a school district  
19 for the provision of educational services; or

20 (c) using a combination of  
21 Subparagraphs (a) and (b) of this paragraph.

22 E. The secretary may make and adopt such  
23 reasonable [~~and~~] procedural rules as may be necessary to  
24 carry out the [~~duties of the department and its divisions~~]  
25 provisions of the Department of Health Act. For any other

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1 rule or administrative directive promulgated, adopted or  
2 amended, the secretary shall cite the specific statutory  
3 provisions warranting the rule or administrative directive.  
4 The secretary may adopt a rule or an administrative directive  
5 only upon specific statutory authorization regarding the  
6 content of the rule or administrative directive. No rule or  
7 administrative directive promulgated by the director of any  
8 division in carrying out the functions and duties of the  
9 division shall be effective until approved by the secretary  
10 unless otherwise provided by statute. Unless otherwise  
11 provided by statute, no rule or administrative directive  
12 affecting any person or agency outside the department shall  
13 be adopted, amended or repealed without a public hearing on  
14 the proposed action before the secretary or a hearing officer  
15 designated by ~~[him]~~ the secretary. The public hearing shall  
16 be held in Santa Fe unless otherwise permitted by statute.  
17 Notice of the subject matter of the rule or administrative  
18 directive, the action proposed to be taken, the time and  
19 place of the hearing, the manner in which interested persons  
20 may present their views and the method by which copies of the  
21 proposed rule or administrative directive or proposed  
22 amendment or repeal of an existing rule or administrative  
23 directive may be obtained shall be published once at least  
24 thirty days prior to the hearing date in a newspaper of  
25 general circulation and mailed at least thirty days prior to

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1 the hearing date to all persons who have made a written  
2 request for advance notice of hearing. All rules and  
3 administrative directives shall be filed in accordance with  
4 the State Rules Act."

5 SECTION 8. Section 9-7A-6 NMSA 1978 (being Laws 1991,  
6 Chapter 25, Section 6) is amended to read:

7 "9-7A-6. SECRETARY--DUTIES AND GENERAL POWERS.--

8 A. The secretary is responsible to the governor  
9 for the operation of the department. It is [~~his~~] the  
10 secretary's duty to manage all operations of the department  
11 and to administer and enforce the laws with which [~~he~~] the  
12 secretary or the department is charged.

13 B. To perform [~~his~~] the secretary's duties, the  
14 secretary has every power expressly enumerated in the laws,  
15 whether granted to the secretary, the department or any  
16 division of the department, except where authority conferred  
17 upon any division is explicitly exempt from the secretary's  
18 authority by statute. In accordance with these provisions,  
19 the secretary shall:

20 (1) except as otherwise provided in the  
21 Department of Environment Act, exercise general supervisory  
22 and appointing authority over all department employees,  
23 subject to any applicable personnel laws and [~~regulations~~]  
24 rules;

25 (2) delegate authority to subordinates as

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1 [he] the secretary deems necessary and appropriate, clearly  
2 delineating that delegated authority and the limitations  
3 thereto;

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

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

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

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

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

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

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

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

10 ~~[(10) give bond in the penal sum of twenty-~~  
11 ~~five thousand dollars (\$25,000) and require directors to each~~  
12 ~~give bond in the penal sum of ten thousand dollars (\$10,000)~~  
13 ~~conditioned upon the faithful performance of duties, as~~  
14 ~~provided in the Surety Bond Act. The department shall pay~~  
15 ~~the costs of those bonds; and~~

16 ~~(11) require performance bonds of department~~  
17 ~~employees and officers as he deems necessary, as provided in~~  
18 ~~the Surety Bond Act. The department shall pay the costs of~~  
19 ~~those bonds.]~~

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

25 D. The secretary may make and adopt such

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1 reasonable [~~and~~] procedural rules [~~and regulations~~] as may be  
2 necessary to carry out the [~~duties of the department and its~~  
3 ~~divisions~~] provisions of the Department of Environment Act.  
4 For any other rule or administrative directive promulgated,  
5 adopted or amended, the secretary shall cite the specific  
6 statutory provisions warranting the rule or administrative  
7 directive. The secretary may adopt a rule or an  
8 administrative directive only upon specific statutory  
9 authorization regarding the content of the rule or  
10 administrative directive. No rule or [~~regulation~~]  
11 administrative directive promulgated by the director of any  
12 division in carrying out the functions and duties of the  
13 division shall be effective until approved by the secretary  
14 unless otherwise provided by statute. Unless otherwise  
15 provided by statute, no procedural [~~regulation~~] rule or  
16 administrative directive affecting any person or agency  
17 outside the department shall be adopted, amended or repealed  
18 without a public hearing on the proposed action before the  
19 secretary or a hearing officer designated by the secretary.  
20 The public hearing shall be held in Santa Fe unless otherwise  
21 permitted by statute. Notice of the subject matter of the  
22 [~~regulation~~] rule or administrative directive, the action  
23 proposed to be taken, the time and place of the hearing, the  
24 manner in which interested persons may present their views  
25 and the method by which copies of the proposed [~~regulation~~]

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1 rule or administrative directive or proposed amendment or  
2 repeal of an existing [~~regulation~~] rule or administrative  
3 directive may be obtained shall be published once at least  
4 thirty days prior to the hearing date in a newspaper of  
5 general circulation and mailed at least thirty days prior to  
6 the hearing date to all persons who have made a written  
7 request for advance notice of hearing. All rules and  
8 [~~regulations~~] administrative directives shall be filed in  
9 accordance with the State Rules Act."

10 SECTION 9. Section 9-8-6 NMSA 1978 (being Laws 1977,  
11 Chapter 252, Section 7, as amended) is amended to read:

12 "9-8-6. SECRETARY--DUTIES AND GENERAL POWERS.--

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

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

25 (1) except as otherwise provided in the

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1 Human Services Department Act, exercise general supervisory  
2 and appointing authority over all department employees,  
3 subject to any applicable personnel laws and [~~regulations~~]  
4 rules;

5 (2) delegate authority to subordinates as  
6 [~~he~~] the secretary deems necessary and appropriate, clearly  
7 delineating such delegated authority and the limitations  
8 thereto;

9 (3) organize the department into those  
10 organizational units [~~he~~] that the secretary deems will  
11 enable it to function most efficiently, subject to any  
12 provisions of law requiring or establishing specific  
13 organizational units;

14 (4) within the limitations of available  
15 appropriations and applicable laws, employ and fix the  
16 compensation of those persons necessary to discharge [~~his~~]  
17 the secretary's duties;

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

25 (6) conduct research and studies that will

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1 improve the operations of the department and the provision of  
2 services to the citizens of the state;

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

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

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

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

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

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

20 (10) appoint, with the governor's consent, a  
21 "director" for each division. These appointed positions are  
22 exempt from the provisions of the Personnel Act. Persons  
23 appointed to these positions shall serve at the pleasure of  
24 the secretary, except as provided in Section 9-8-9 NMSA 1978.

25 [~~(11) give bond in the penal sum of twenty-~~

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1 ~~five thousand dollars (\$25,000) and require directors to each~~  
2 ~~give bond in the penal sum of ten thousand dollars (\$10,000)~~  
3 ~~conditioned upon the faithful performance of duties as~~  
4 ~~provided in the Surety Bond Act. The department shall pay~~  
5 ~~the costs of these bonds; and~~

6 ~~(12) require performance bonds of such~~  
7 ~~department employees and officers as he deems necessary as~~  
8 ~~provided in the Surety Bond Act. The department shall pay~~  
9 ~~the costs of these bonds.]~~

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

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

20 E. The secretary may make and adopt such  
21 reasonable [~~and~~] procedural rules [~~and regulations~~] as may be  
22 necessary to carry out the [~~duties of the department and its~~  
23 ~~divisions~~] provisions of the Human Services Department Act.  
24 For any other rule or administrative directive promulgated,  
25 adopted or amended, the secretary shall cite the specific

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1 statutory provisions warranting the rule or administrative  
2 directive. The secretary may adopt a rule or an  
3 administrative directive only upon specific statutory  
4 authorization regarding the content of the rule or  
5 administrative directive. No rule or [~~regulation~~]  
6 administrative directive promulgated by the director of any  
7 division in carrying out the functions and duties of the  
8 division shall be effective until approved by the secretary  
9 unless otherwise provided by statute. Unless otherwise  
10 provided by statute, no [~~regulation~~] rule or administrative  
11 directive affecting any person or agency outside the  
12 department shall be adopted, amended or repealed without a  
13 public hearing on the proposed action before the secretary or  
14 a hearing officer designated by [~~him~~] the secretary. The  
15 public hearing shall be held in Santa Fe unless otherwise  
16 permitted by statute. Notice of the subject matter of the  
17 [~~regulation~~] rule or administrative directive, the action  
18 proposed to be taken, the time and place of the hearing, the  
19 manner in which interested persons may present their views  
20 and the method by which copies of the proposed [~~regulation~~]  
21 rule or administrative directive or proposed amendment or  
22 repeal of an existing [~~regulation~~] rule or administrative  
23 directive may be obtained shall be published once at least  
24 thirty days prior to the hearing date in a newspaper of  
25 general circulation and mailed at least thirty days prior to

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1 the hearing date to all persons who have made a written  
2 request for advance notice of hearing.

3 F. In the event the secretary anticipates that  
4 adoption, amendment or repeal of a rule or [~~regulation~~]  
5 administrative directive will be required by a cancellation,  
6 reduction or suspension of federal funds or order by a court  
7 of competent jurisdiction:

8 (1) if the secretary is notified by  
9 appropriate federal authorities at least sixty days prior to  
10 the effective date of such cancellation, reduction or  
11 termination of federal funds, the department is required to  
12 promulgate [~~regulations~~] rules or administrative directives  
13 through the public hearing process to be effective on the  
14 date mandated by the appropriate federal authority; or

15 (2) if the secretary is notified by  
16 appropriate federal authorities or court less than sixty days  
17 prior to the effective date of such cancellation, reduction  
18 or suspension of federal funds or court order, the department  
19 is authorized without a public hearing to promulgate interim  
20 rules or [~~regulations~~] administrative directives effective  
21 for a period not to exceed ninety days. Interim  
22 [~~regulations~~] rules or administrative directives shall not be  
23 promulgated without first providing a written notice twenty  
24 days in advance to providers of medical or behavioral health  
25 services and beneficiaries of department programs. At the

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1 time of the promulgation of the interim rules or  
2 [~~regulations~~] administrative directives, the department shall  
3 give notice of the public hearing on the final rules or  
4 [~~regulations~~] administrative directives in accordance with  
5 Subsection E of this section.

6 G. If the secretary certifies to the secretary of  
7 finance and administration and gives contemporaneous notice  
8 of such certification through the human services register  
9 that the department has insufficient state funds to operate  
10 any of the programs it administers and that reductions in  
11 services or benefit levels are necessary, the secretary may  
12 engage in interim rulemaking. Notwithstanding any provision  
13 to the contrary in the State Rules Act, interim rulemaking  
14 shall be conducted pursuant to Subsection E of this section,  
15 except:

16 (1) the period of notice of public hearing  
17 shall be fifteen days;

18 (2) the department shall also send  
19 individual notices of the interim rulemaking and of the  
20 public hearing to affected providers and beneficiaries;

21 (3) rules and [~~regulations~~] administrative  
22 directives promulgated pursuant to the provisions of this  
23 subsection shall be in effect not less than five days after  
24 the public hearing;

25 (4) rules and [~~regulations~~] administrative

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1 directives promulgated pursuant to the provisions of this  
2 subsection shall not be in effect for more than ninety days;  
3 and

4 (5) if final rules and [~~regulations~~]  
5 administrative directives are necessary to replace the  
6 interim rules and [~~regulations~~] administrative directives,  
7 the department shall give notice of intent to promulgate  
8 final rules and [~~regulations~~] administrative directives at  
9 the time of notice herein. The final rules and [~~regulations~~]  
10 administrative directives shall be promulgated not more than  
11 forty-five days after the public hearing and filed in  
12 accordance with the State Rules Act.

13 H. At the time of the promulgation of the interim  
14 rules or [~~regulations~~] administrative directives, the  
15 department shall give notice of the public hearing on the  
16 final rules or [~~regulations~~] administrative directives in  
17 accordance with Subsection E of this section.

18 I. The secretary shall ensure that any behavioral  
19 health services, including mental health and substance abuse  
20 services, provided, contracted for or approved are in  
21 compliance with the requirements of Section 9-7-6.4 NMSA  
22 1978.

23 J. All rules and [~~regulations~~] administrative  
24 directives shall be filed in accordance with the State Rules  
25 Act."

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1           SECTION 10. Section 9-15-6 NMSA 1978 (being Laws 1983,  
2 Chapter 297, Section 6, as amended) is amended to read:

3           "9-15-6. SECRETARY--DUTIES AND GENERAL POWERS.--

4           A. The secretary is responsible to the governor  
5 for the operation of the department. It is [~~his~~] the  
6 secretary's duty to manage all operations of the department  
7 and to administer and enforce the laws with which [~~he~~] the  
8 secretary or the department is charged.

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

16                   (1) except as otherwise provided in the  
17 Economic Development Department Act, exercise general  
18 supervisory and appointing authority over all department  
19 employees, subject to any applicable personnel laws and  
20 [~~regulations~~] rules;

21                   (2) delegate authority to subordinates as  
22 [~~he~~] the secretary deems necessary and appropriate, clearly  
23 delineating such delegated authority and the limitations  
24 thereto;

25                   (3) organize the department into those

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1 organizational units [~~he~~] that the secretary deems will  
2 enable it to function most efficiently;

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

7 (5) take administrative action by issuing  
8 orders and instructions, not inconsistent with the law, to  
9 assure implementation of and compliance with the provisions  
10 of law for whose administration or execution [~~he~~] the  
11 secretary is responsible and to enforce those orders and  
12 instructions by appropriate administrative action in the  
13 courts;

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

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

22 (8) prepare an annual budget of the  
23 department based upon the five-year economic development plan  
24 approved by the commission. The economic development plan  
25 shall be updated and approved annually by the commission;

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

3 (a) minimize or eliminate duplication  
4 of services;

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

7 (c) resolve by agreement the manner  
8 and extent to which the department shall provide budgeting,  
9 recordkeeping and related clerical assistance to  
10 administratively attached agencies; and

11 (10) appoint a "director" for each division.  
12 These appointed positions are exempt from the provisions of  
13 the Personnel Act. Persons appointed to these positions  
14 shall serve at the pleasure of the secretary.

15 ~~[(11) give bond in the penal sum of twenty-~~  
16 ~~five thousand dollars (\$25,000) and require directors to each~~  
17 ~~give bond in the penal sum of ten thousand dollars (\$10,000)~~  
18 ~~conditioned upon the faithful performance of duties, as~~  
19 ~~provided in the Surety Bond Act. The department shall pay~~  
20 ~~the costs of these bonds; and~~

21 ~~(12) require performance bonds of such~~  
22 ~~department employees and officers as he deems necessary, as~~  
23 ~~provided in the Surety Bond Act. The department shall pay~~  
24 ~~the costs of these bonds.]~~

25 C. The secretary may apply for and receive in the

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1 name of the department any public or private funds, including  
2 but not limited to United States government funds, available  
3 to the department to carry out its programs, duties or  
4 services.

5 D. The secretary may make and adopt such  
6 reasonable [~~and~~] procedural rules [~~and regulations~~] as may be  
7 necessary to carry out the [~~duties of the department and its~~  
8 ~~divisions~~] provisions of the Economic Development Department  
9 Act. For any other rule or administrative directive  
10 promulgated, adopted or amended, the secretary shall cite the  
11 specific statutory provisions warranting the rule or  
12 administrative directive. The secretary may adopt a rule or  
13 an administrative directive only upon specific statutory  
14 authorization regarding the content of the rule or  
15 administrative directive. No rule or [~~regulation~~]  
16 administrative directive promulgated by the director of any  
17 division in carrying out the functions and duties of the  
18 division shall be effective until approved by the secretary  
19 unless otherwise provided by statute. Unless otherwise  
20 provided by statute, no [~~regulation~~] rule or administrative  
21 directive affecting any person or agency outside the  
22 department shall be adopted, amended or repealed without a  
23 public hearing on the proposed action before the secretary or  
24 a hearing officer designated by [~~him~~] the secretary. The  
25 public hearing shall be held in Santa Fe unless otherwise

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1 permitted by statute. Notice of the subject matter of the  
2 [~~regulation~~] rule or administrative directive, the action  
3 proposed to be taken, the time and place of the hearing, the  
4 manner in which interested persons may present their views  
5 and the method by which copies of the proposed [~~regulation~~]  
6 rule or administrative directive or proposed amendment or  
7 repeal of an existing [~~regulation~~] rule or administrative  
8 directive may be obtained shall be published once at least  
9 thirty days prior to the hearing date in a newspaper of  
10 general circulation and mailed at least thirty days prior to  
11 the hearing date to all persons who have made a written  
12 request for advance notice of hearing. All rules and  
13 [~~regulations~~] administrative directives shall be filed in  
14 accordance with the State Rules Act."

15 SECTION 11. Section 9-15A-6 NMSA 1978 (being Laws 1991,  
16 Chapter 21, Section 6, as amended) is amended to read:

17 "9-15A-6. SECRETARY--DUTIES AND GENERAL POWERS.--

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

23 B. To perform [~~his~~] the secretary's duties, the  
24 secretary has every power expressly enumerated in the laws,  
25 whether granted to the secretary or the department or any

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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) except as otherwise provided in the  
6 Tourism Department Act, exercise general supervisory and  
7 appointing authority over all department employees, subject  
8 to any applicable personnel laws and [~~regulations~~] rules;

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

13 (3) organize the department into those  
14 organizational units [~~he~~] that the secretary deems will  
15 enable it to function most efficiently;

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

20 (5) take administrative action by issuing  
21 orders and instructions, not inconsistent with the law, to  
22 assure implementation of and compliance with the provisions  
23 of law for which administration or execution [~~he~~] the  
24 secretary is responsible and to enforce those orders and  
25 instructions by appropriate administrative action in the

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1 courts;

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

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

10 (8) prepare an annual budget of the  
11 department based upon the five-year tourism plan approved by  
12 the commission. This plan shall be updated and approved  
13 annually by the commission;

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

16 (a) minimize or eliminate duplication  
17 of services;

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

20 (c) resolve by agreement the manner  
21 and extent to which the department shall provide budgeting,  
22 recordkeeping and related clerical assistance; and

23 (10) appoint a "director" for each division.  
24 These appointed positions are exempt from the provisions of  
25 the Personnel Act. Persons appointed to these positions

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1 shall serve at the pleasure of the secretary.

2 ~~[(11) give bond in the penal sum of twenty-~~  
3 ~~five thousand dollars (\$25,000) and require directors each to~~  
4 ~~give bond in the penal sum of ten thousand dollars (\$10,000)~~  
5 ~~conditioned upon the faithful performance of duties, as~~  
6 ~~provided in the Surety Bond Act. The department shall pay~~  
7 ~~the costs of these bonds; and~~

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

12 C. The secretary may apply for and receive in the  
13 name of the department any public or private funds, including  
14 but not limited to United States government funds, available  
15 to the department to carry out its programs, duties or  
16 services.

17 D. The secretary may make and adopt such  
18 reasonable [and] procedural rules [and regulations] as may be  
19 necessary to carry out the [duties of the department and its  
20 divisions] provisions of the Tourism Department Act. For any  
21 other rule or administrative directive promulgated, adopted  
22 or amended, the secretary shall cite the specific statutory  
23 provisions warranting the rule or administrative directive.  
24 The secretary may adopt a rule or an administrative directive  
25 only upon specific statutory authorization regarding the

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

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1           SECTION 12. Section 9-16-6 NMSA 1978 (being Laws 1983,  
2 Chapter 297, Section 22) is amended to read:

3           "9-16-6. SUPERINTENDENT--DUTIES AND GENERAL POWERS.--

4           A. The superintendent is responsible to the  
5 governor for the operation of the department. It is [~~his~~]  
6 the superintendent's duty to manage all operations of the  
7 department and to administer and enforce the laws with which  
8 [~~he~~] the superintendent or the department is charged.

9           B. To perform [~~his~~] the superintendent's duties,  
10 the superintendent has every power expressly enumerated in  
11 the laws, whether granted to the superintendent or the  
12 department or any division of the department, except where  
13 authority conferred upon any division is explicitly exempted  
14 from the superintendent's authority by statute. In  
15 accordance with these provisions, the superintendent shall:

16                   (1) except as otherwise provided in the  
17 Regulation and Licensing Department Act, exercise general  
18 supervisory and appointing authority over all department  
19 employees, subject to any applicable personnel laws and  
20 [~~regulations~~] rules;

21                   (2) delegate authority to subordinates as  
22 [~~he~~] the superintendent deems necessary and appropriate,  
23 clearly delineating such delegated authority and the  
24 limitations thereto;

25                   (3) organize the department into those

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1 organizational units [~~he~~] that the superintendent deems will  
2 enable it to function most efficiently, subject to any  
3 provisions of law requiring or establishing specific  
4 organizational units;

5 (4) within the limitations of available  
6 appropriations and applicable laws, employ and fix the  
7 compensation of those persons necessary to discharge [~~his~~]  
8 the superintendent's duties;

9 (5) take administrative action by issuing  
10 orders and instructions, not inconsistent with the law, to  
11 assure implementation of and compliance with the provisions  
12 of law for whose administration or execution [~~he~~] the  
13 superintendent is responsible and to enforce those orders and  
14 instructions by appropriate administrative action or actions  
15 in the courts;

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

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

24 (8) prepare an annual budget of the  
25 department;

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

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

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

7 (c) resolve by agreement the manner  
8 and extent to which the department shall provide budgeting,  
9 recordkeeping and related clerical assistance to  
10 administratively attached agencies; and

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

16 [~~(11) give bond in the penal sum of twenty-~~  
17 ~~five thousand dollars (\$25,000) and require directors to each~~  
18 ~~give bond in the penal sum of ten thousand dollars (\$10,000)~~  
19 ~~conditioned upon the faithful performance of duties, as~~  
20 ~~provided in the Surety Bond Act. The department shall pay~~  
21 ~~the costs of these bonds; and~~

22 ~~(12) require performance bonds of such~~  
23 ~~department employees and officers as he deems necessary, as~~  
24 ~~provided in the Surety Bond Act. The department shall pay~~  
25 ~~the costs of these bonds.]~~

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1 C. The superintendent may apply for and receive,  
2 with the governor's approval, in the name of the department  
3 any public or private funds, including but not limited to  
4 United States government funds, available to the department  
5 to carry out its programs, duties or services.

6 D. The superintendent may make and adopt such  
7 reasonable [~~and~~] procedural rules [~~and regulations~~] as may be  
8 necessary to carry out the [~~duties of the department and its~~  
9 ~~divisions~~] provisions of the Regulation and Licensing  
10 Department Act. For any other rule or administrative  
11 directive promulgated, adopted or amended, the superintendent  
12 shall cite the specific statutory provisions warranting the  
13 rule or administrative directive. The superintendent may  
14 adopt a rule or an administrative directive only upon  
15 specific statutory authorization regarding the content of the  
16 rule or administrative directive. No rule or [~~regulation~~]  
17 administrative directive promulgated by the director of any  
18 division in carrying out the functions and duties of the  
19 division shall be effective until approved by the  
20 superintendent, unless otherwise provided by statute. Unless  
21 otherwise provided by statute, no [~~regulation~~] rule or  
22 administrative directive affecting any person or agency  
23 outside the department shall be adopted, amended or repealed  
24 without a public hearing on the proposed action before the  
25 superintendent or a hearing officer designated by [~~him~~] the

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

16 SECTION 13. Section 9-17-5 NMSA 1978 (being Laws 1983,  
17 Chapter 301, Section 5) is amended to read:

18 "9-17-5. SECRETARY--DUTIES AND GENERAL POWERS.--

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

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

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

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

12 (2) delegate authority to subordinates as  
13 ~~[he]~~ the secretary 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 secretary deems will  
18 enable it to function most efficiently, subject to any  
19 provisions of law, including executive orders of the  
20 governor, requiring or establishing specific organizational  
21 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]~~  
25 the secretary's duties;

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

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

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

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

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

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

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

23 (c) resolve by agreement the manner  
24 and extent to which the department shall provide budgeting,  
25 recordkeeping and related clerical assistance to

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1 administratively attached agencies; and

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

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

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

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

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

24 E. The secretary may make and adopt such  
25 reasonable [~~administrative and~~] procedural rules [~~and~~

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1 ~~regulations~~] as may be necessary to carry out the [~~duties of~~  
2 ~~the department and its divisions~~] provisions of the General  
3 Services Department Act. For any other rule or  
4 administrative directive promulgated, adopted or amended, the  
5 secretary shall cite the specific statutory provisions  
6 warranting the rule or administrative directive. The  
7 secretary may adopt a rule or an administrative directive  
8 only upon specific statutory authorization regarding the  
9 content of the rule or administrative directive. No rule or  
10 [~~regulation~~] administrative directive promulgated by the  
11 director of any division in carrying out the functions and  
12 duties of the division shall be effective until approved by  
13 the secretary unless otherwise provided by statute. Unless  
14 otherwise provided by statute, no [~~regulation~~] rule or  
15 administrative directive affecting any person or agency  
16 outside the department shall be adopted, amended or repealed  
17 without a public hearing on the proposed action before the  
18 secretary or a hearing officer designated by [~~him~~] the  
19 secretary. The public hearing shall be held in Santa Fe  
20 unless otherwise permitted by statute. Notice of the subject  
21 matter of the [~~regulation~~] rule or administrative directive,  
22 the action proposed to be taken, the time and place of the  
23 hearing, the manner in which interested persons may present  
24 their views and the method by which copies of the proposed  
25 [~~regulation~~] rule or administrative directive or proposed

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1 amendment or repeal of an existing [~~regulation~~] rule or  
2 administrative directive may be obtained shall be published  
3 once at least thirty days prior to the hearing date in a  
4 newspaper of general circulation in the state and mailed at  
5 least thirty days prior to the hearing date to all persons  
6 who have made written request for advance notice of hearing.  
7 All rules and [~~regulations~~] administrative directives shall  
8 be filed in accordance with the State Rules Act."

9 SECTION 14. Section 9-19-6 NMSA 1978 (being Laws 1987,  
10 Chapter 254, Section 6, as amended) is amended to read:

11 "9-19-6. SECRETARY--DUTIES AND GENERAL POWERS.--

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

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

24 (1) except as otherwise provided in the  
25 Department of Public Safety Act, exercise general supervisory

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1 and appointing authority over all department employees,  
2 subject to any applicable personnel laws and [~~regulations~~]  
3 rules; provided that the secretary shall not reduce positions  
4 for the seventy-sixth fiscal year budgeted in the General  
5 Appropriation Act of 1987 except for cause, by attrition or  
6 by occurrence of a vacancy;

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

11 (3) organize the department into those  
12 organizational units [~~he~~] that the secretary deems will  
13 enable it to function most efficiently, subject to any  
14 provisions of law requiring or establishing specific  
15 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 [~~his~~]  
19 the secretary's duties;

20 (5) take administrative action by issuing  
21 orders and instructions, not inconsistent with the law, to  
22 assure implementation of and compliance with the provisions  
23 of law with the administration or execution of which [~~he~~] the  
24 secretary is responsible and to enforce those orders and  
25 instructions by appropriate administrative action [~~or~~

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underscoring material = new  
~~[bracketed material] = delete~~

1 ~~actions]~~ in the court;

2 (6) conduct research and studies that will  
3 improve the operation of the department and examine other  
4 entities and functions of state government related to public  
5 safety for purposes of possible transfer to the department;

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

11 (8) prepare an annual budget of the  
12 department;

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

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

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

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

23 (10) appoint, with the governor's consent,  
24 for each division, a director. These appointed positions are  
25 exempt from the provisions of the Personnel Act. Persons

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1 appointed to these positions shall serve at the pleasure of  
2 the secretary; and

3 (11) appoint the director of the New Mexico  
4 law enforcement academy, subject to the approval of the New  
5 Mexico law enforcement academy board.

6 [~~(12) give bond in the penal sum of twenty-~~  
7 ~~five thousand dollars (\$25,000) and require directors to each~~  
8 ~~give bond in the penal sum of ten thousand dollars (\$10,000),~~  
9 ~~conditioned upon the faithful performance of duties as~~  
10 ~~provided in the Surety Bond Act, with the department paying~~  
11 ~~the cost of such bonds; and~~

12 ~~(13) require performance bonds of such~~  
13 ~~employees and officers as he deems necessary as provided in~~  
14 ~~the Surety Bond Act, with the department paying the costs of~~  
15 ~~such bonds.]~~

16 C. 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 but not limited to United  
19 States government funds, available to the department to carry  
20 out its programs, duties or services.

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

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1           E. The secretary may make and adopt such  
2 reasonable [~~and~~] procedural rules [~~and regulations~~] as may be  
3 necessary to carry out the [~~duties of the department and its~~  
4 ~~divisions~~] provisions of the Department of Public Safety Act.  
5 For any other rule or administrative directive promulgated,  
6 adopted or amended, the secretary shall cite the specific  
7 statutory provisions warranting the rule or administrative  
8 directive. The secretary may adopt a rule or an  
9 administrative directive only upon specific statutory  
10 authorization regarding the content of the rule or  
11 administrative directive. No rule or [regulation]  
12 administrative directive promulgated by the director of any  
13 division in carrying out the functions and duties of the  
14 division shall be effective until approved by the secretary  
15 unless otherwise provided by statute. Unless otherwise  
16 provided by statute, no [regulation] rule or administrative  
17 directive affecting any person or agency outside the  
18 department shall be adopted, amended or repealed without a  
19 public hearing on the proposed action before the secretary or  
20 a hearing officer designated by [him] the secretary. The  
21 public hearing shall be held in Santa Fe unless otherwise  
22 permitted by statute. Notice of the subject matter of the  
23 [regulation] rule or administrative directive, the action  
24 proposed to be taken, the time and place of the hearing, the  
25 manner in which interested persons may present their views

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1 and the method by which copies of the proposed [~~regulation~~]  
2 rule or administrative directive or proposed amendment or  
3 repeal of an existing [~~regulation~~] rule or administrative  
4 directive may be obtained shall be published once at least  
5 thirty days prior to the hearing date in a newspaper of  
6 general circulation in the state and mailed at least thirty  
7 days prior to the hearing date to all persons who have made a  
8 written request for advance notice of hearing.

9 F. All rules and [~~regulations~~] administrative  
10 directives shall be filed in accordance with the State Rules  
11 Act."

12 SECTION 15. Section 9-21-6 NMSA 1978 (being Laws 2004,  
13 Chapter 18, Section 6 and Laws 2004, Chapter 24, Section 6)  
14 is amended to read:

15 "9-21-6. SECRETARY--DUTIES AND GENERAL POWERS.--

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

21 B. To perform [~~his~~] the secretary's duties, the  
22 secretary has every power expressly enumerated in the laws,  
23 whether granted to the secretary or any division of the  
24 department, except where authority conferred upon any  
25 division in the department is explicitly exempted from the

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1 secretary's authority by statute. In accordance with these  
2 provisions, the secretary shall:

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

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

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

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

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

25 (6) conduct research and studies that will

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1 improve the operations of the department and the provision of  
2 services to the citizens of the state;

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

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

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

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

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

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

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

25 C. The secretary may apply for and receive, with

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1 the governor's approval, in the name of the department, any  
2 public or private funds, including United States government  
3 funds, available to the department to carry out its programs,  
4 duties or services.

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

10 E. The secretary may make and adopt such  
11 reasonable procedural rules as may be necessary to carry out  
12 the ~~[duties of the department and its divisions]~~ provisions  
13 of the Indian Affairs Department Act. For any other rule or  
14 administrative directive promulgated, adopted or amended, the  
15 secretary shall cite the specific statutory provisions  
16 warranting the rule or administrative directive. The  
17 secretary may adopt a rule or an administrative directive  
18 only upon specific statutory authorization regarding the  
19 content of the rule or administrative directive. A rule or  
20 administrative directive promulgated by the director of a  
21 division in carrying out the functions and duties of the  
22 division shall not be effective until approved by the  
23 secretary. Unless otherwise provided by statute, a rule or  
24 administrative directive affecting a person or agency outside  
25 the department shall not be adopted, amended or repealed

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1 without a public hearing on the proposed action before the  
2 secretary or a hearing officer designated by the secretary.  
3 The public hearing shall be held in Santa Fe unless otherwise  
4 permitted by statute. Notice of the subject matter of the  
5 rule or administrative directive, the action proposed to be  
6 taken, the time and place of the hearing, the manner in which  
7 interested persons may present their views and the method by  
8 which copies of the proposed rule or administrative directive  
9 or proposed amendment or repeal of an existing rule or  
10 administrative directive may be obtained shall be published  
11 once at least thirty days prior to the hearing date in a  
12 newspaper of general circulation and mailed at least thirty  
13 days prior to the hearing date to all persons who have made a  
14 written request for advance notice of hearing. All rules and  
15 administrative directives shall be filed in accordance with  
16 the State Rules Act."

17 SECTION 16. Section 9-23-6 NMSA 1978 (being Laws 2004,  
18 Chapter 23, Section 6) is amended to read:

19 "9-23-6. SECRETARY--DUTIES AND GENERAL POWERS.--

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

25 B. To perform the secretary's duties, the

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

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

12 (2) delegate authority to subordinates as  
13 the secretary 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 that the secretary deems will enable it  
18 to function most efficiently, subject to provisions of law  
19 requiring or establishing specific organizational units;

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

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

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1 ensure implementation of and compliance with the provisions  
2 of law for whose administration or execution the secretary is  
3 responsible and to enforce those orders and instructions by  
4 appropriate administrative action in the courts;

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

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

13 (8) prepare an annual budget of the  
14 department;

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

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

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

21 (c) resolve by agreement the manner  
22 and extent to which the department shall provide budgeting,  
23 recordkeeping and related clerical assistance to  
24 administratively attached agencies; and

25 (10) appoint, with the governor's consent,

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1 for each division, a "director". These appointed positions  
2 are exempt from the provisions of the Personnel Act. Persons  
3 appointed to these positions shall serve at the pleasure of  
4 the secretary.

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

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

15 E. The secretary may make and adopt such  
16 reasonable procedural rules as may be necessary to carry out  
17 the ~~[duties of the department and its divisions]~~ provisions  
18 of the Aging and Long-Term Services Department Act. For any  
19 other rule or administrative directive promulgated, adopted  
20 or amended, the secretary shall cite the specific statutory  
21 provisions warranting the rule or administrative directive.  
22 The secretary may adopt a rule or an administrative directive  
23 only upon specific statutory authorization regarding the  
24 content of the rule or administrative directive. A rule or  
25 administrative directive promulgated by the director of any

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1 division in carrying out the functions and duties of the  
2 division shall not be effective until approved by the  
3 secretary unless otherwise provided by statute. Unless  
4 otherwise provided by statute, no rule or administrative  
5 directive affecting any person or agency outside the  
6 department shall be adopted, amended or repealed without a  
7 public hearing on the proposed action before the secretary or  
8 a hearing officer designated by the secretary. The public  
9 hearing shall be held in Santa Fe unless otherwise permitted  
10 by statute. Notice of the subject matter of the rule or  
11 administrative directive, the action proposed to be taken,  
12 the time and place of the hearing, the manner in which  
13 interested persons may present their views and the method by  
14 which copies of the proposed rule or administrative directive  
15 or proposed amendment or repeal of an existing rule or  
16 administrative directive may be obtained shall be published  
17 once at least thirty days prior to the hearing date in a  
18 newspaper of general circulation and mailed at least thirty  
19 days prior to the hearing date to all persons who have made a  
20 written request for advance notice of hearing. Rules and  
21 administrative directives shall be filed in accordance with  
22 the State Rules Act."

23 SECTION 17. Section 9-24-8 NMSA 1978 (being Laws 2004,  
24 Chapter 27, Section 8) is amended to read:

25 "9-24-8. SECRETARY--DUTIES AND GENERAL POWERS.--

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1           A. The secretary is responsible to the governor  
2 for the operation of the department. It is the secretary's  
3 duty to manage all operations of the department and to  
4 administer and enforce the laws with which [~~he~~] the secretary  
5 or the department is charged.

6           B. To perform [~~his~~] the secretary's duties, the  
7 secretary has every power expressly enumerated in the law,  
8 whether granted to the secretary, the department or any  
9 division of the department, except when any division is  
10 explicitly exempted from the secretary's power by statute.  
11 In accordance with these provisions, the secretary shall:

12                   (1) except as otherwise provided in the  
13 Public Education Department Act or the Public School Code,  
14 exercise general supervisory and appointing power over all  
15 department employees, subject to applicable personnel laws  
16 and rules;

17                   (2) delegate power to subordinates as [~~he~~]  
18 the secretary deems necessary and appropriate, clearly  
19 delineating such delegated power and the limitations to that  
20 power;

21                   (3) organize the department into  
22 organizational units as necessary to enable it to function  
23 most efficiently, subject to any provisions of law requiring  
24 or establishing specific organizational units;

25                   (4) within the limitations of available

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1 appropriations and applicable laws, employ and fix the  
2 compensation of those persons necessary to discharge [~~his~~]  
3 the secretary's duties;

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

10 (6) conduct research and studies that will  
11 improve the operation of the department and the provision of  
12 services to the citizens of the state;

13 (7) provide courses of instruction and  
14 practical training for employees of the department and other  
15 persons involved in the administration of programs with the  
16 objectives of improving the operations and efficiency of  
17 administration and of promoting comprehensive, coordinated  
18 and culturally sensitive services that address the education  
19 of the whole child;

20 (8) prepare an annual budget for the  
21 department; and

22 (9) provide cooperation, at the request of  
23 administratively attached agencies and adjunct agencies, in  
24 order to:

25 (a) minimize or eliminate duplication

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1 of services and jurisdictional conflicts;

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

4 (c) resolve by agreement the manner  
5 and extent to which the department shall provide budgeting,  
6 recordkeeping and related clerical assistance to  
7 administratively attached agencies.

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

13 D. The secretary may make and adopt such  
14 reasonable [~~and~~] procedural rules as may be necessary to  
15 carry out the [~~duties of the department and its divisions~~]  
16 provisions of the Public Education Department Act. For any  
17 other rule or administrative directive promulgated, adopted  
18 or amended, the secretary shall cite the specific statutory  
19 provisions warranting the rule or administrative directive.  
20 The secretary may adopt a rule or an administrative directive  
21 only upon specific statutory authorization regarding the  
22 content of the rule or administrative directive. No rule or  
23 administrative directive promulgated by the director of any  
24 division in carrying out the functions and duties of the  
25 division shall be effective until approved by the secretary.

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

21 SECTION 18. Section 9-25-8 NMSA 1978 (being Laws 2005,  
22 Chapter 289, Section 8) is amended to read:

23 "9-25-8. SECRETARY--DUTIES AND GENERAL POWERS.--

24 A. The secretary is responsible to the governor  
25 for the operation of the department. It is the secretary's

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underscoring material = new  
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1 duty to manage all operations of the department and to  
2 administer and enforce the laws with which the secretary or  
3 the department is charged.

4 B. To perform the duties of the secretary, the  
5 secretary has every power expressly enumerated in the law,  
6 whether granted to the secretary, the department or any  
7 division of the department, except when any division is  
8 explicitly exempted from the secretary's power by statute.  
9 In accordance with these provisions, the secretary shall:

10 (1) except as otherwise provided in the  
11 Higher Education Department Act or Chapter 21 NMSA 1978,  
12 exercise general supervisory and appointing power over all  
13 department employees, subject to applicable personnel laws  
14 and rules;

15 (2) delegate power to subordinates as the  
16 secretary deems necessary and appropriate, clearly  
17 delineating such delegated power and the limitations to that  
18 power;

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

23 (4) within the limitations of available  
24 appropriations and applicable laws, employ and fix the  
25 compensation of those persons necessary to discharge the

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1 duties of the secretary;

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

8 (6) conduct research and studies that will  
9 improve the operation 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 objectives of improving the operations and efficiency of  
15 administration;

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

18 (9) provide cooperation, at the request of  
19 administratively attached agencies and adjunct agencies, in  
20 order to:

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

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

25 (c) resolve by agreement the manner

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1 and extent to which the department shall provide budgeting,  
2 recordkeeping and related clerical assistance to  
3 administratively attached agencies.

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

9 D. The secretary may make and adopt such  
10 reasonable [~~and~~] procedural rules as may be necessary to  
11 carry out the [~~duties of the department and its divisions~~]  
12 provisions of the Higher Education Department Act. For any  
13 other rule or administrative directive promulgated, adopted  
14 or amended, the secretary shall cite the specific statutory  
15 provisions warranting the rule or administrative directive.  
16 The secretary may adopt a rule or an administrative directive  
17 only upon specific statutory authorization regarding the  
18 content of the rule or administrative directive. No rule or  
19 administrative directive promulgated by the director of any  
20 division in carrying out the functions and duties of the  
21 division shall be effective until approved by the secretary.  
22 Unless otherwise provided by statute, no rule or  
23 administrative directive affecting any person or agency  
24 outside the department shall be adopted, amended or repealed  
25 without a public hearing on the proposed action before the

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1 secretary or a hearing officer designated by the secretary.  
2 No rule or administrative directive promulgated by the  
3 department shall infringe upon the authority vested by  
4 Article 12 of the constitution of New Mexico in the boards of  
5 regents of the educational institutions specified in that  
6 article. The final public hearing on adoption, amendment or  
7 repeal of a rule or administrative directive shall be held in  
8 Santa Fe unless otherwise permitted by statute. Notice of  
9 the subject matter of the rule or administrative directive,  
10 the action proposed to be taken, the time and place of the  
11 hearing, the manner in which interested persons may present  
12 their views and the method by which copies of the proposed  
13 rule or administrative directive or proposed amendment or  
14 repeal of an existing rule or administrative directive may be  
15 obtained shall be published once at least thirty days prior  
16 to the hearing date in a newspaper of general circulation and  
17 mailed at least thirty days prior to the hearing date to all  
18 persons who have made a written request for advance notice of  
19 hearing. All rules and administrative directives shall be  
20 filed in accordance with the State Rules Act."

21 SECTION 19. Section 9-26-6 NMSA 1978 (being Laws 2007,  
22 Chapter 200, Section 6) is amended to read:

23 "9-26-6. SECRETARY--GENERAL POWERS AND DUTIES.--

24 A. The secretary is responsible to the governor  
25 for the operation of the department. It is the secretary's

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underscored material = new  
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1 duty to manage all operations of the department and to  
2 administer and enforce the laws with which the secretary or  
3 the department is charged.

4 B. To perform the secretary's duties, the  
5 secretary has every power expressly enumerated in the laws  
6 whether granted to the secretary or the department or any  
7 division of the department, except where authority conferred  
8 upon the human rights commission is explicitly granted by  
9 Section 28-1-4 NMSA 1978 and except where authority conferred  
10 upon any division therein is explicitly exempted from the  
11 secretary's authority by statute. In accordance with these  
12 provisions, the secretary shall:

13 (1) except as otherwise provided in the  
14 Workforce Solutions Department Act, exercise general  
15 supervisory and appointing authority over all department  
16 employees, subject to any applicable personnel laws and  
17 [~~regulations~~] rules;

18 (2) delegate authority to subordinates as  
19 the secretary deems necessary and appropriate, clearly  
20 delineating such delegated authority and the limitations  
21 thereto;

22 (3) organize the department into those  
23 organizational units that the secretary deems will enable it  
24 to function most efficiently, subject to any provisions of  
25 law requiring or establishing specific organizational units;

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underscoring material = new  
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1 (4) within the limitations of available  
2 appropriations and applicable laws, employ and fix the  
3 compensation of those persons necessary to discharge the  
4 secretary's duties;

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

12 (6) conduct research and studies that will  
13 improve the operation of the department;

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

19 (8) prepare an annual budget of the  
20 department;

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

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

25 (b) coordinate activities and resolve

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underscored material = new  
[bracketed material] = delete

1 problems of mutual concern; and

2 (c) resolve by agreement the manner  
3 and extent to which the department shall provide budgeting,  
4 recordkeeping and related clerical assistance to  
5 administratively attached agencies, if any; and

6 (10) within budgetary limits, appoint such  
7 staff as required to carry out the duties of the secretary or  
8 the department.

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

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

19 E. The secretary may make and adopt such  
20 reasonable [~~and~~] procedural rules as may be necessary to  
21 carry out the [~~duties of the department and its divisions~~]  
22 provisions of the Workforce Solutions Department Act. For  
23 any other rule or administrative directive promulgated,  
24 adopted or amended, the secretary shall cite the specific  
25 statutory provisions warranting the rule or administrative

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underscoring material = new  
~~[bracketed material]~~ = delete

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

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1 directives shall be filed in accordance with the State Rules  
2 Act."

3 SECTION 20. Section 9-28-4 NMSA 1978 (being Laws 2007,  
4 Chapter 291, Section 4, as amended) is amended to read:

5 "9-28-4. HOMELAND SECURITY AND EMERGENCY MANAGEMENT  
6 DEPARTMENT--CREATED--POWERS AND DUTIES.--

7 A. The "homeland security and emergency  
8 management department" is created in the executive branch.  
9 The department is a cabinet department. The chief  
10 administrative and executive officer of the department is the  
11 "secretary of homeland security and emergency management",  
12 who shall be appointed by the governor with the consent of  
13 the senate and hold office at the pleasure of the governor.

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

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

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1 (1) except as otherwise provided in the  
2 Homeland Security and Emergency Management Department Act,  
3 exercise general supervisory and appointing authority over  
4 all department employees, subject to any applicable personnel  
5 laws and rules;

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

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

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

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

24 (6) conduct research and studies that will  
25 improve the operations of the department and the provision of

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1 services to the residents of the state;

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

7 (8) prepare an annual budget of the  
8 department;

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

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

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

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

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

24 D. The secretary may apply for and receive, with  
25 the governor's approval, in the name of the department any

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1 public or private funds, including United States government  
2 funds, available to the department to carry out its programs,  
3 duties or services.

4 E. The secretary may make and adopt such  
5 reasonable ~~[and]~~ procedural rules as may be necessary to  
6 carry out the ~~[duties of the department and its divisions]~~  
7 provisions of the Homeland Security and Emergency Management  
8 Department Act. For any other rule or administrative  
9 directive promulgated, adopted or amended, the secretary  
10 shall cite the specific statutory provisions warranting the  
11 rule or administrative directive. The secretary may adopt a  
12 rule or an administrative directive only upon specific  
13 statutory authorization regarding the content of the rule or  
14 administrative directive. No rule or administrative  
15 directive promulgated by the director of any division in  
16 carrying out the functions and duties of the division shall  
17 be effective until approved by the secretary, unless  
18 otherwise provided by statute. Unless otherwise provided by  
19 statute, no rule or administrative directive affecting any  
20 person or agency outside the department shall be adopted,  
21 amended or repealed without a public hearing on the proposed  
22 action before the secretary or a hearing officer designated  
23 by the secretary. The public hearing shall be held in Santa  
24 Fe unless otherwise permitted by statute. Notice of the  
25 subject matter of the rule or administrative directive, the

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1 action proposed to be taken, the time and place of the  
2 hearing, the manner in which interested persons may present  
3 their views and the method by which copies of the proposed  
4 rule or administrative directive or proposed amendment or  
5 repeal of an existing rule or administrative directive may be  
6 obtained shall be published once at least thirty days prior  
7 to the hearing date in a newspaper of general circulation and  
8 mailed at least thirty days prior to the hearing date to all  
9 persons who have made a written request for advance notice of  
10 hearing. All rules and administrative directives shall be  
11 filed in accordance with the State Rules Act."

12 SECTION 21. Section 14-4-2 NMSA 1978 (being Laws 1967,  
13 Chapter 275, Section 2, as amended) is amended to read:

14 "14-4-2. DEFINITIONS.--As used in the State Rules Act:

15 A. "agency" means any agency, board, commission,  
16 department, institution or officer of the state government  
17 except the judicial and legislative branches of the state  
18 government;

19 B. "person" includes individuals, associations,  
20 partnerships, companies, business trusts and corporations;  
21 and

22 C. "rule" means any rule, regulation, order,  
23 standard [~~statement of policy~~] or administrative directive,  
24 including amendments thereto or repeals thereof, issued or  
25 promulgated by any agency and purporting to affect one or

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1 more agencies besides the agency issuing [~~such~~] the rule or  
2 to affect persons not members or employees of [~~such~~] the  
3 issuing agency. An order or decision or other document  
4 issued or promulgated in connection with the disposition of  
5 any case or agency decision upon a particular matter as  
6 applied to a specific set of facts shall not be deemed such a  
7 rule, nor shall it constitute specific adoption thereof by  
8 the agency. [~~Such term shall~~] "Rule" does not include rules  
9 relating to the management, confinement, discipline or  
10 release of inmates of any penal or charitable institution,  
11 the [~~Springer~~] New Mexico boys' school, the girls' welfare  
12 home [~~of~~] or any hospital [~~nor to~~]; rules made relating to  
13 the management of any particular educational institution,  
14 whether elementary or otherwise [~~nor to~~]; or rules made  
15 relating to admissions, discipline, supervision, expulsion or  
16 graduation of students [~~therefrom~~] from any educational  
17 institution."

18 SECTION 22. A new section of the State Rules Act is  
19 enacted to read:

20 "[NEW MATERIAL] RULEMAKING AUTHORITY.--

21 A. Statutory language granting rulemaking  
22 authority or generally describing the powers and functions of  
23 the department shall not be construed to extend further than  
24 implementing or interpreting the specific powers and duties  
25 conferred by the enabling statute.

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B. An agency may make and adopt such reasonable procedural rules as may be necessary to carry out its duties. For any other rule promulgated, adopted or amended, the agency shall cite the specific statutory provisions warranting the rule. The agency may adopt a rule only upon specific statutory authorization regarding the content of the rule."