

1 SENATE BILL 170

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Mark Moores

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10 AN ACT

11 RELATING TO PUBLIC EMPLOYEES; PROVIDING THAT FULL-TIME  
12 EMPLOYEES OF THE GOVERNOR'S RESIDENCE ARE EXEMPT FROM COVERAGE  
13 BY THE PERSONNEL ACT; PLACING THOSE EMPLOYEES UNDER THE  
14 AUTHORITY OF THE SECRETARY OF GENERAL SERVICES.

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

17 SECTION 1. Section 9-17-5 NMSA 1978 (being Laws 1983,  
18 Chapter 301, Section 5) is amended to read:

19 "9-17-5. SECRETARY--DUTIES AND GENERAL POWERS.--

20 A. The secretary is responsible to the governor for  
21 the operation of the department. It is [~~his~~] the secretary's  
22 duty to manage all operations of the department and to  
23 administer and enforce the laws with which [~~he~~] the secretary  
24 or the 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, the  
6 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 and  
10 full-time employees of the governor's residence, subject to any  
11 applicable personnel laws and [~~regulations~~] rules;

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

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

25 (5) take administrative action by issuing

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

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

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

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

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

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

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

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

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

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

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

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

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

22 E. The secretary may make and adopt such reasonable  
23 administrative and procedural rules ~~[and regulations]~~ as may be  
24 necessary to carry out the duties of the department and its  
25 divisions. No rule ~~[or regulation]~~ promulgated by the director

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

21 SECTION 2. Section 10-9-4 NMSA 1978 (being Laws 1961,  
22 Chapter 240, Section 4, as amended) is amended to read:

23 "10-9-4. COVERAGE OF SERVICE.--The Personnel Act and the  
24 service cover all state positions except:

25 A. officials elected by popular vote or appointed

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1 to fill vacancies to elective offices;

2 B. members of boards and commissions and heads of  
3 agencies appointed by the governor;

4 C. heads of agencies appointed by boards or  
5 commissions;

6 D. directors of department divisions;

7 E. those in educational institutions and in public  
8 schools;

9 F. those employed by state institutions and by  
10 state agencies providing educational programs and who are  
11 required to hold valid certificates as certified school  
12 instructors as defined in Section 22-1-2 NMSA 1978 issued by  
13 the ~~[state board of]~~ public education department;

14 G. those in the governor's office;

15 H. those in the state militia or the commissioned  
16 officers of the New Mexico state police division of the  
17 department of public safety;

18 I. those in the judicial branch of government;

19 J. those in the legislative branch of government;

20 K. not more than two assistants and one secretary  
21 in the office of each official listed in Subsections A, B and C  
22 of this section, excluding members of boards and commissions in  
23 Subsection B of this section;

24 L. those of a professional or scientific nature  
25 ~~[which]~~ that are temporary in nature;

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1 M. those filled by patients or inmates in  
2 charitable, penal or correctional institutions;

3 N. state employees if the personnel board in its  
4 discretion decides that the position is one of policymaking;  
5 [~~and~~]

6 O. disadvantaged youth under twenty-two years of  
7 age regularly enrolled or to be enrolled in a secondary  
8 educational institution approved by the [~~state board of~~] public  
9 education department or in an accredited state institution of  
10 advanced learning or vocational training and who are to be  
11 employed for not more than seven hundred twenty hours during  
12 any calendar year, provided that:

13 (1) the term "disadvantaged youth" shall be  
14 defined for purposes of this exemption by [~~regulation~~] rule  
15 duly promulgated by the board; and

16 (2) the board shall:

17 (a) require that all the criteria of  
18 this subsection have been met;

19 (b) establish employment lists for the  
20 certification of the highest-standing candidates to the  
21 prospective employers; and

22 (c) establish the pay rates for such  
23 employees; and

24 P. those employees of the general services  
25 department employed to provide full-time services at the

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1 governor's residence."

2 SECTION 3. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is July 1, 2013.

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