

# ARTICLE 27

## Department of Information Technology

### 9-27-1. Short title.

Chapter 9, Article 27 NMSA 1978 may be cited as the "Department of Information Technology Act".

**History:** [Laws 2007, ch. 290, § 1](#); [2008, ch. 84, § 1](#).

### ANNOTATIONS

The 2008 amendment, effective May 14, 2008, added the statutory reference to the act.

### 9-27-2. Purpose.

The purpose of the Department of Information Technology Act is to create a single, unified executive branch department to administer all laws and exercise all functions formerly administered by the office of the chief information officer, the information technology commission, pursuant to the Information Technology Management Act, and the communications division, information systems division, radio communications bureau and telecommunications bureau of the general services department to consolidate enterprise information technology services duplicated within executive agencies and provide additional information technology services and functionality to improve and streamline the executive branch's information technology systems.

**History:** [Laws 2007, ch. 290, § 2](#).

### ANNOTATIONS

**Effective dates.** — [Laws 2007, ch. 290, § 28](#) made the Department of Information Technology Act effective July 1, 2007.

### 9-27-3. Definitions.

As used in the Department of Information Technology Act:

A. "department" means the department of information technology;

B. "information technology" means computer hardware and software and ancillary products and services, including:

- (1) systems design and analysis;
- (2) acquisition, storage and conversion of data;
- (3) computer programming;
- (4) information storage and retrieval;
- (5) voice, radio, video and data communications;
- (6) requisite systems;
- (7) simulation and testing; and
- (8) related interactions between users and information systems;

C. "information technology project" means the purchase, replacement, development or modification of a hardware or software system;

D. "secretary" means the secretary of information technology;

E. "state information architecture" means a logically consistent set of principles, policies and standards that guides the engineering of state government's information technology systems and infrastructure in a way that ensures alignment with state government's business needs;

F. "state information technology strategic plan" means the information technology planning document for the state that spans a three-year period; and

G. "telecommunication network" means the physical and logical components and all associated infrastructure used in transporting, routing, aggregating and delivering voice and data information from computer and telecommunications systems in one location to peer systems in another.

**History:** [Laws 2007, ch. 290, § 3](#); [2017, ch. 7, § 1](#).

## ANNOTATIONS

**The 2017 amendment**, effective June 16, 2017, added the definition of "telecommunication network" to the Department of Information Technology Act; and added Subsection G.

### 9-27-4. Department created; divisions.

A. The "department of information technology" is created. The department is a cabinet department and includes the following divisions:

- (1) program support division;
- (2) compliance and project management division; and
- (3) enterprise services division.

B. The secretary may organize the department and the divisions specified in Subsection A of this section and may transfer or merge functions between divisions in the interest of efficiency and economy.

**History:** [Laws 2007, ch. 290, § 4.](#)

### ANNOTATIONS

**Effective dates.** — [Laws 2007, ch. 290, § 28](#) made the Department of Information Technology Act effective July 1, 2007.

## 9-27-5. Secretary of information technology; appointment.

A. The chief executive and administrative officer of the department is the "secretary of information technology". The secretary shall serve as the state's chief information officer. The secretary shall be appointed by the governor with the consent of the senate. The secretary shall hold that office at the pleasure of the governor and shall serve in the executive cabinet.

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

**History:** [Laws 2007, ch. 290, § 5.](#)

### ANNOTATIONS

**Effective dates.** — [Laws 2007, ch. 290, § 28](#) made the Department of Information Technology Act effective July 1, 2007.

## 9-27-6. Secretary; duties and general powers.

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

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

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

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

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

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

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

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

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

(8) prepare an annual budget of the department;

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

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

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

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

(10) appoint for each division a "director". These appointed positions are exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978]. Persons appointed to these positions shall serve at the pleasure of the secretary.

C. As the chief information officer, the secretary shall:

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

(2) approve executive agency information technology requests for proposals and other executive agency requests that are subject to the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], prior to final approval;

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

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

- (5) develop and implement procedures to standardize data elements, determine data ownership and ensure data sharing among executive agencies;
- (6) verify compliance with state information architecture and the state information technology strategic plan before approving documents referred to in Paragraphs (2) and (4) of this subsection;
- (7) monitor executive agency compliance with its agency plan, the state information technology strategic plan and state information architecture and report to the governor, executive agency management and the legislative finance committee on noncompliance;
- (8) develop information technology cost recovery mechanisms and information systems rate and fee structures of state agencies and other public or private sector providers and make recommendations to the information technology rate committee;
- (9) provide technical support to executive agencies in the development of their agency plans;
- (10) ensure the use of existing public or private information technology or telecommunications resources when the use is practical, efficient, effective and financially prudent and is in compliance with the Procurement Code;
- (11) review appropriation requests related to executive agency information technology requests to ensure compliance with agency plans and the state information technology strategic plan and make written recommendations by November 14 of each year to the department of finance and administration and by November 21 of each year to the legislative finance committee and the appropriate interim legislative committee; provided, however, that the recommendations to the legislative committees have been agreed to by the department of information technology and the department of finance and administration;
- (12) promulgate rules to ensure that information technology projects satisfy criteria established by the secretary and are phased in with funding released in phases contingent upon successful completion of the prior phase;
- (13) provide oversight of information technology projects, including ensuring adequate risk management, disaster recovery and business continuity practices and monitoring compliance with strategies for information technology projects that affect multiple agencies;
- (14) conduct reviews of information technology projects and provide written reports to the appropriate legislative oversight bodies;
- (15) conduct background checks on department employees and prospective department employees that have or will have administrative access or authority to sensitive, confidential or private information or the ability to alter systems, networks or other information technology hardware or software; and
- (16) perform any other information technology function assigned by the governor.

D. Each executive agency shall submit an agency information technology plan to the secretary in the form and detail required by the secretary. Each executive agency shall conduct background checks on agency or prospective agency employees that have or will have

administrative access or authority to alter systems, networks or other information technology hardware or software.

E. A state agency that receives an invoice from the department for services rendered to the agency shall have thirty days from receipt of the invoice to pay the department or to notify the department if the amount of the invoice is in dispute. The agency shall have fifteen days from its notification of dispute to the department to present its reasons in writing and request an adjustment. The department shall have fifteen days from its receipt of the reasons for dispute to notify the agency of its decision. If the department and the agency do not agree on a resolution, the secretary of finance and administration shall make a determination on the amount owed by the agency to the department. If the agency has not paid the department or notified the department of a dispute within thirty days of receipt of the invoice, the department shall notify the department of finance and administration and request that the department of finance and administration transfer funds from the agency to the department of information technology to satisfy the agency's obligation.

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

- (1) interchange of information related to information technology among executive agencies;
- (2) coordination among executive agencies in the development and maintenance of information technology systems;
- (3) protection of the privacy and security of individual information as well as of individuals using the state's information technology systems;
- (4) development of a statewide broadband network plan in conjunction with the public education department, the higher education department, state universities, other educational institutions, the public school capital outlay council, political subdivisions of the state, Indian nations, tribes and pueblos, the public regulation commission and telecommunication network service providers; and
- (5) coordination and aggregation of services where feasible for entities as provided for in Section [9-27-20](#) NMSA 1978 and other publicly funded entities.

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

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

I. 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 and requirements and standards for the executive branch's information technology needs, functions, systems and resources, including:

- (1) information technology security;
- (2) approval for procurement of information technology that exceeds an amount set by rule;
- (3) detail and format for the agency information technology plan;
- (4) acquisition, licensing and sale of information technology; and
- (5) requirements for agency information technology projects and related plan, analysis, oversight, assessment and specifications.

J. Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule, proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for an advance notice of hearing. Rules shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** [Laws 2007, ch. 290, § 6](#); [2009, ch. 146, § 2](#); [2017, ch. 7, § 2](#); [2017, ch. 45, § 2](#).

## ANNOTATIONS

**2017 Multiple Amendments.** — [Laws 2017, ch. 7, § 2](#) and [Laws 2017, ch. 45, § 2](#), both effective June 16, 2017, enacted different amendments to this section that can be reconciled. Pursuant to [12-1-8 NMSA 1978](#), [Laws 2017, ch. 45, § 2](#), as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by [Laws 2017, ch. 7, § 2](#) and [Laws 2017, ch. 45, § 2](#) are described below. To view the session laws in their entirety, see the 2017 session laws on [NMOneSource.com](#).

The nature of the difference between the amendments is that [Laws 2017, ch. 7, § 2](#), required the secretary of information technology to provide for the development of a statewide broadband network plan, which is to be included in the secretary's state information technology strategic plan, and [Laws 2017, ch. 45, § 2](#), removed references to the information technology commission, and revised the duties of the secretary of information technology due to the termination of the information technology commission.

[Laws 2017, ch. 45, § 2](#), effective June 16, 2017, removed references to the information technology commission, and revised the duties of the secretary of information technology due to the termination of the information technology commission; in Subsection B, Subparagraph B(9)(c), after "budgeting", changed "record-keeping" to "recordkeeping"; and in Subsection C, Paragraph C(11), after "appropriate interim legislative committee", deleted "and the information technology commission", and after "recommendations to the legislative committees", deleted "and the commission", in Paragraph C(13), after "monitoring compliance with strategies", deleted "recommended by the information technology commission", in Paragraph C(14), after "written reports to the", deleted "information technology commission

and", and deleted former Paragraph C(16) and redesignated Paragraph C(17) as Paragraph C(16).

**Laws 2017, ch. 7, § 2**, effective June 16, 2017, required the secretary of information technology to provide for the development of a statewide broadband network plan which is to be included in the secretary's state information technology strategic plan; and in Subsection F, added Paragraphs F(4) and F(5).

**The 2009 amendment**, effective June 19, 2009, in Paragraph (6) of Subsection B, after "provision of services to", changed "executive" to "state"; in Paragraph (1) of Subsection C, after "reduction of", added "duplicate or redundant" and after "software", deleted "redundancy"; in Paragraph (2) of Subsection C, after "proposals and", deleted "contract vendor" and added "other executive agency"; in Paragraph (4) of Subsection C, at the end of the sentence, after "administration", deleted "provided, however, that this does not apply to maintenance contracts or agreements that were in place or approved before July 1, 2009"; in Paragraph (8) of Subsection C, after "structures of", changed "executive" to "state"; in Paragraph (10) of Subsection C, at the end of the sentence, added "and is in compliance with the Procurement Code"; in Paragraph (11) of Subsection C, after "written recommendations", added "by November 14 of each year"; after "administration", added "and by November 21 of each year to"; and at the end of the sentence after "technology commission", added the remainder of the sentence; added Paragraphs (14) through (16) of Subsection C; in Subsection D, added the last sentence; added Subsection E; and in Subsection F, after "executive branch", added "and update it at least once every three years, which plan shall be available to agencies by July 31 of each year".

## **9-27-7. Information technology rate committee; membership; duties.**

A. The "information technology rate committee" is created. The committee consists of seven members as follows:

- (1) five members appointed by the governor from executive agencies that use information technology services and pay rates to an internal service fund;
- (2) the secretary of finance and administration, who shall serve as chair of the committee; and
- (3) the secretary of information technology.

B. The information technology rate committee shall:

- (1) review the rate and fee schedule proposed by the secretary;
- (2) ensure that the rate and fee schedule complies with the federal office of management and budget circular A-87 or its successor directive;
- (3) consider for approval an equitable rate and fee schedule based on cost recovery for state agencies that use information technology services and pay rates to an internal service fund, with priority service to public safety agencies;



(4) present the committee's proposed rate and fee schedule by June 1 of each year to the office of the governor, the department of finance and administration and the legislative finance committee; and

(5) by July 15 of each year, implement a rate and fee schedule based on the committee's recommendations; provided, however, that a reduction in rates or fees by the department shall not require the committee's approval if the reduction is based on cost recovery and if the committee is notified timely.

**History:** [Laws 2007, ch. 290, § 7](#); [2009, ch. 146, § 3](#).

### ANNOTATIONS

**The 2009 amendment**, effective June 19, 2009, added Paragraph (2) of Subsection B; in Paragraph (3) of Subsection B, at the beginning of the sentence, deleted "purpose" and added "consider for approval"; in Paragraph (4) of Subsection B, after "fee schedule", added "by June 1 of each year"; and in Paragraph (5) of Subsection B, after "committee's recommendations", deleted "and input from the office of the governor, the department of finance and administration and the legislative finance committee" and added the remainder of the sentence.

## 9-27-8. Organizational units of the department; powers and duties specified by law; access to information.

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, who shall retain the final decision-making authority and responsibility for the administration of any such laws. The department shall have access to all information technology records, data and information of other executive branch departments, agencies and institutions, including its own organizational units, not specifically held confidential by law.

**History:** [Laws 2007, ch. 290, § 8](#).

### ANNOTATIONS

**Effective dates.** — [Laws 2007, ch. 290, § 28](#) made the Department of Information Technology Act effective July 1, 2007.

## 9-27-9. Repealed.

**History:** [Laws 2007, ch. 290, § 9](#); [2009, ch. 146, § 4](#); repealed by [Laws 2017, ch. 45, § 1](#).

### ANNOTATIONS

**Repeals.** — [Laws 2017, ch. 45, § 1](#) repealed [9-27-9 NMSA 1978](#), as enacted by [Laws 2007, ch. 290, § 9](#), relating to the information technology commission, creation, powers and duties, effective July 1, 2018. For provisions of former section, see the 2018 NMSA 1978 on [NMOneSource.com](#).

### **9-27-9.1. Termination of agency life; delayed repeal.**

The information technology commission is terminated July 1, 2017 pursuant to the provisions of the Sunset Act [[12-9-11](#) to [12-9-21 NMSA 1978](#)]. The commission shall continue to operate according to the provisions of the Department of Information Technology Act until July 1, 2018. Effective July 1, 2018, Section [9-27-9 NMSA 1978](#) (being [Laws 2007, Chapter 290, Section 9](#), as amended) is repealed.

**History:** [Laws 2017, ch. 45, § 1](#).

### **ANNOTATIONS**

**Effective dates.** — [Laws 2017, ch. 45](#) contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 16, 2017, 90 days after the adjournment of the legislature.

### **9-27-10. Temporary provision; transfer of functions, personnel, property, contracts and references in law.**

A. The transfer of functions, personnel, appropriations, money, records, equipment, supplies, other property and contractual obligations of the office of the chief information officer, the information technology commission, pursuant to the Information Technology Management Act, and the communications division, information systems division, radio communications bureau and telecommunications bureau of the general services department is approved and transferred to the department of information technology. All references in law to the office of the chief information officer, the information technology commission, pursuant to the Information Technology Management Act, and the communications division, information systems division, radio communications bureau and telecommunications bureau of the general services department shall be deemed to be references to the department of information technology.

B. It is the intent of the legislature that consolidation of state services and programs into the department of information technology be accomplished as quickly as practicable, without disruption in information technology services to executive agencies.

C. At the time of transfer of an agency or program, all personnel, money, appropriations, records, files, furniture, equipment and other property related to that agency or program shall be transferred to the department of information technology. The governor's office and the state budget division of the department of finance and administration shall assist in the identification of personnel, money, appropriations and property to be transferred and shall certify to the legislature that resources transferred from other agencies to the department of information technology are sufficient to continue the same level of services.

D. Contractual and other obligations of an agency or program shall be obligations of the department of information technology.

E. After the effective date of the transfers provided in Subsection B of this section, references in law to the programs being transferred shall be deemed to be references to the department of information technology.

F. The secretary of information technology shall provide periodic updates to the legislative finance committee and other appropriate interim legislative committees on the progress of the transition and integration plan and the establishment of the department of information technology. By November 1, 2007, the secretary shall provide the legislative finance committee and other appropriate interim legislative committees with a comprehensive plan to provide information technology services for all executive branch agencies, including recommendations, if any, for the transfer of additional information technology services or programs from other agencies to the department of information technology.

**History:** [Laws 2007, ch. 290, § 26.](#)

### ANNOTATIONS

**Effective dates.** — [Laws 2007, ch. 290, § 28](#) made the Department of Information Technology Act effective July 1, 2007.

## 9-27-11. Equipment replacement plans; equipment replacement revolving funds.

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

B. Upon the request of the secretary, the state treasurer shall establish in the state treasury such "equipment replacement revolving funds" as are necessary to administer each of the department's enterprise functions. The revolving funds shall consist of legislative appropriations to the funds and transfers made to the funds pursuant to Subsections C and D of this section. Income from investment of the revolving funds shall be credited back to the funds, and money in the funds shall not revert at the end of a fiscal year. Expenditures from the funds shall only be made pursuant to an appropriation from the legislature and only for the purpose of acquiring and replacing capital equipment and associated software used to provide enterprise services pursuant to the department's equipment replacement plans.

C. The department shall record amounts due to the equipment replacement revolving funds each fiscal year, based on the calculation of amortization and depreciation applicable to each enterprise service as reflected in the department's published cost structures for calculation of rates for services. Transfers to the funds shall be made from the operating funds of each

enterprise in amounts that reconcile with the recorded amounts due. The recording of amounts due to the equipment replacement revolving funds and the transfer of the funds shall be consistent with generally accepted accounting principles.

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

**History:** [Laws 2008, ch. 84, § 2](#); [2009, ch. 146, § 5](#); [2017, ch. 45, § 3](#).

### ANNOTATIONS

**The 2017 amendment**, effective June 16, 2017, in Subsection A, after "the department of finance and administration", deleted "the information technology commission".

**The 2009 amendment**, effective June 19, 2009, in Subsection A, in the second sentence, deleted "December 1" and added "September 1"; in Subsection B, in the last sentence, added "and associated software"; and in Subsection C, in the first sentence, added "amortization and".

## 9-27-12. Human resources; accounting and management reporting.

The department shall:

A. enter into a memorandum of understanding with the department of finance and administration for the joint design, development, acquisition and implementation of the statewide human resources, accounting and management reporting system or its successor system;

B. include a per employee assessment per agency that is sufficient to provide for the support, operation, maintenance, software upgrade or equipment replacement of the statewide human resources, accounting and management reporting system or its successor system; and

C. ensure that an amount equal to at least the annual depreciation and amortization be deposited in a separately identifiable account for software upgrades and equipment replacement.

**History:** [Laws 2009, ch. 146, § 6](#).

### ANNOTATIONS

**Effective dates.** — [Laws 2009, ch. 146](#) contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 9-27-13. Telecommunications services.

A. The secretary of information technology may hire a communications engineer to oversee the engineering responsibilities of the department of information technology. The communications engineer shall have a degree in either electrical engineering with an electrical communications specialty or in electronics engineering.

B. In providing telecommunications services pursuant to Chapter 15 NMSA 1978, the department of information technology shall not provide telecommunications services, including telephone, data and broadband services, to an entity other than those authorized pursuant to Section 15-5-1 NMSA 1978 [9-27-20 NMSA 1978], except as is necessary to facilitate a state-mandated program, including distance education, telehealth or school-based health center programs. Before expansion or upgrade of a state-owned or state-funded telecommunications network, whether voice, data or video transmission, the department shall prepare a plan consistent with state law and applicable rules that includes an assessment of how the project would potentially affect local telecommunications service providers and telecommunications service ratepayers.

History: 1953 Comp., § 4-26-1, enacted by Laws 1977, ch. 247, § 23; Laws 1978, ch. 124, § 3; 1980, ch. 151, § 9; 1983, ch. 301, § 39; 2007, ch. 290, § 13; 1978 Comp., § 15-2-1, recompiled as § 9-27-13 by Laws 2009, ch. 146, § 10.

## ANNOTATIONS

**Recompilations.** — Laws 2009, ch. 146, § 10 recompiled former 15-2-1 NMSA 1978 as 9-27-13 NMSA 1978, effective June 19, 2009.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2009, ch. 146, § 10 recompiled former 15-5-1 NMSA 1978 as 9-27-20 NMSA 1978, effective June 19, 2009.

**The 2007 amendment,** effective July 1, 2007, deleted former Subsection A; combined former Subsections B and C as new Subsection A; in Subsection A, after "secretary of", deleted "general services" and added "information technology". and after "responsibilities of the ", deleted "division" and added "department of information technology"; and added a new Subsection B.

### 9-27-14. Radio communications.

The department of information technology shall have supervisory control over all mobile or fixed radio equipment now owned or subsequently acquired by the executive branch or any state officer, department, other agency, board, commission, division or bureau of any executive state department or agency. This supervisory control shall include but not be limited to the determination of the need for, purchase, repair, maintenance, combination or disposition of radio equipment.

**History:** 1953 Comp., § 4-26-2, enacted by Laws 1977, ch. 247, § 24; 1978, ch. 124, § 4; 1980, ch. 151, § 10; 1983, ch. 301, § 40; 2007, ch. 290, § 14; 1978 Comp., § 15-2-2, recompiled as § 9-27-14 by Laws 2009, ch. 146, § 10.

## ANNOTATIONS

**Recompilations.** — [Laws 2009, ch. 146, § 10](#) recompiled former [15-2-2 NMSA 1978](#) as [9-27-14 NMSA 1978](#), effective June 19, 2009.

### 9-27-15. Lease of radio communications network; conditions and requirements.

In exercising supervisory control pursuant to Section [15-2-2 NMSA 1978](#) [[9-27-14 NMSA 1978](#)], the department of information technology may lease to a private entity excess capacity relating to the provision of two-way radio services on its radio communications property, including buildings, towers or antennas, provided that:

- A. the lease conforms with competitive procurement requirements of the Procurement Code [[13-1-28](#) to [13-1-199 NMSA 1978](#)];
- B. the lease is for an equal value exchange of money or property;
- C. the secretary of information technology certifies that the excess capacity will be available for at least the duration of the lease;
- D. if the lease exceeds ten years, the lease is first approved by the state board of finance;
- E. the department of information technology has submitted to the legislative finance committee a detailed plan for the use of excess capacity being leased and an assessment of how the lease will affect public sector uses and local telecommunication service providers; and
- F. income from the leases shall be deposited to the credit of the department of information technology and used to carry out the duties of the department.

**History:** 1978 Comp., § 15-2-2.1, enacted by [Laws 1997, ch. 263, § 1](#); [2007, ch. 288, § 2](#); [2007, ch. 290, § 15](#); recompiled as § 9-27-15 by [Laws 2009, ch. 146, § 10](#).

## ANNOTATIONS

**Recompilations.** — [Laws 2009, ch. 146, § 10](#) recompiled former [15-2-2.1 NMSA 1978](#) as [9-27-15 NMSA 1978](#), effective June 19, 2009.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. [Laws 2009, ch. 146, § 10](#) recompiled former [15-2-2 NMSA 1978](#) as [9-27-14 NMSA 1978](#), effective June 19, 2009.

**2007 Multiple Amendments.** — [Laws 2007, ch. 288, § 2](#), effective June 15, 2007, and [Laws 2007, ch. 290, § 15](#), effective July 1, 2007, both enacted amendments to this section. Pursuant to [12-1-8 NMSA 1978](#), [Laws 2007, ch. 290, § 15](#), as the last act signed by the governor, has been compiled into the NMSA 1978 as set out above, and [Laws 2007, ch. 288, § 2](#), while not compiled pursuant to [12-1-8 NMSA 1978](#), is set out below.

**Laws 2007, ch. 290, § 15 [set out above]**, effective July 1, 2007, authorized the department of information technology radio communications to lease a private excess capacity relating for two-way radio services.

**Laws 2007, ch. 288, § 2 [set out below]**, effective June 15, 2007, in Subsection E, added local telecommunication service providers to the plan and provided:

"15-2-2.1. Lease of radio communications network; conditions and requirements.

In exercising supervisory control pursuant to Section **15-2-2** NMSA 1978, the radio communications bureau of the communications division of the general services department may lease to a private entity excess capacity on its radio communications property, including buildings, towers or antennas, provided that:

- A. the lease conforms with competitive procurement requirements of the Procurement Code;
- B. the lease is for an equal value exchange of money or property;
- C. the secretary of general services certifies that the excess capacity will be available for at least the duration of the lease;
- D. if the lease exceeds ten years, the lease is first approved by the state board of finance;
- E. the radio communications bureau has submitted to the legislative finance committee a detailed plan for the use of excess capacity being leased and an assessment of how the lease will affect public sector uses and local telecommunications service providers; and
- F. income from the leases shall be deposited to the credit of the radio communications bureau and used to carry out the duties of the bureau."

## **9-27-16. Service charge.**

A. The department of information technology shall charge a fee to the state or any officer, agency, department, division, board or commission of the state for any services rendered in the exercise of its supervisory control.

B. Fees shall be fixed by the secretary of information technology.

C. Income from fees collected shall be deposited to the credit of the department of information technology and used to carry out the duties of the department.

D. The department of information technology may provide two-way radio services to counties and municipalities at the same rates charged state agencies.

**History:** 1953 Comp., § 4-26-2.1, enacted by Laws 1970, ch. 71, § 1; 1975, ch. 214, § 1; 1977, ch. 247, § 25; 1978, ch. 124, § 5; 1980, ch. 151, § 11; 1983, ch. 301, § 41; **2007, ch. 290, § 16**; 1978 Comp., § 15-2-3, recompiled as § 9-27-16 by **Laws 2009, ch. 146, § 10**.

## **ANNOTATIONS**

**Recompilations.** — [Laws 2009, ch. 146, § 10](#) recompiled former [15-2-3 NMSA 1978](#) as [9-27-16 NMSA 1978](#), effective June 19, 2009.

## 9-27-17. Exclusion from jurisdiction.

The department of information technology shall not have supervisory control over:

A. the use of radio equipment, except as to the technical requirements of the equipment or unless the equipment is used by one or more agencies, and the department of information technology must determine priority of use;

B. the radio equipment of the department of military affairs, except the department of information technology may maintain all radio equipment owned by the department of military affairs that interfaces with state-owned radio equipment; or

C. unless otherwise directed by the secretary of information technology, radio equipment that is incidental to a system that is primarily a telephone system.

**History:** 1953 Comp., § 4-26-3, enacted by [Laws 1966, ch. 32, § 3](#); [1971, ch. 115, § 1](#); [1977, ch. 247, § 26](#); [1978, ch. 124, § 6](#); [1980, ch. 151, § 12](#); [1983, ch. 301, § 42](#); [2007, ch. 290, § 17](#); [1978 Comp., § 15-2-4](#), recompiled as § 9-27-17 by [Laws 2009, ch. 146, § 10](#).

### ANNOTATIONS

**Recompilations.** — [Laws 2009, ch. 146, § 10](#) recompiled former [15-2-4 NMSA 1978](#) as [9-27-17 NMSA 1978](#), effective June 19, 2009.

## 9-27-18. Property transfer.

Ownership of all radio communication property at mountaintop or remote sites, including buildings, towers, antennas, emergency power plants and radio equipment owned by the New Mexico state police, department of transportation, department of game and fish and forestry division of the energy, minerals and natural resources department, is transferred to the department of information technology.

**History:** 1953 Comp., § 4-26-4, enacted by [Laws 1971, ch. 115, § 2](#); [1977, ch. 247, § 27](#); [1978, ch. 124, § 7](#); [1980, ch. 151, § 13](#); [1983, ch. 301, § 43](#); [2007, ch. 290, § 18](#); [1978 Comp., § 15-2-5](#), recompiled as § 9-27-18 by [Laws 2009, ch. 146, § 10](#).

### ANNOTATIONS

**Recompilations.** — [Laws 2009, ch. 146, § 10](#) recompiled former [15-2-5 NMSA 1978](#) as [9-27-18 NMSA 1978](#), effective June 19, 2009.



## 9-27-19. Transfer of property; custody and control.

The radio equipment purchased in accordance with Laws 1972, Chapter 74 by the facilities management division of the general services department is transferred to the department of information technology. The department has the custody and control of the transferred radio equipment.

**History:** 1953 Comp., § 4-26-7, enacted by Laws 1975, ch. 214, § 4; 1977, ch. 247, § 29; 1978, ch. 124, § 10; 1980, ch. 151, § 15; 1983, ch. 301, § 44; **2007, ch. 290, § 19**; 1978 Comp., § 15-2-8, recompiled as § 9-27-19 by **Laws 2009, ch. 146, § 10**; **2013, ch. 115, § 8**.

### ANNOTATIONS

**Recompilations.** — **Laws 2009, ch. 146, § 10** recompiled former **15-2-8 NMSA 1978** as **9-27-19 NMSA 1978**, effective June 19, 2009.

**The 2013 amendment**, effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; and deleted "property control" and added "facilities management" before "division".

## 9-27-20. Telecommunications; duties.

A. The department shall enter into necessary agreements to provide, where feasible, a telecommunication network and related facilities to all executive, legislative and judicial branches. Nothing in this section shall be construed to apply to the provision of a telecommunication network and related facilities to political subdivisions of the state.

B. Pursuant to Section **9-27-13 NMSA 1978**, the department may, where feasible and economical, provide a telecommunication network and related facilities to educational institutions that request to be included in the telecommunication network and shall enter into the necessary contractual agreements with telecommunication providers to provide the telecommunication network and related facilities to educational institutions that request to be included in the telecommunication network.

C. Pursuant to Sections **9-27-6** and **9-27-13 NMSA 1978**, the department and the public education department shall coordinate to apply for reimbursements from the federal universal service fund pursuant to Section 254 of the federal Telecommunications Act of 1996, 47 U.S.C. 254, as such section existed on January 1, 2006, on behalf of state agencies, political subdivisions and educational institutions as available for telecommunication network services.

D. Pursuant to Section **9-27-7 NMSA 1978**, the department shall establish a rate structure based on actual costs, including necessary administrative expenses, and shall charge participants according to such rate structure.

**History:** Laws 1963, ch. 181, § 1; 1953 Comp., § 6-1-24; Laws 1965, ch. 225, § 1; 1977, ch. 247, § 61; 1978, ch. 124, § 11; 1980, ch. 151, § 17; 1983, ch. 301, § 57; **2007, ch. 288, § 3**; **2007, ch. 290, § 20**; 1978 Comp., § 15-5-1, recompiled as § 9-27-20 by **Laws 2009, ch. 146, § 10**; **2017, ch. 7, § 3**.

## ANNOTATIONS

**Recompilations.** — [Laws 2009, ch. 146, § 10](#) recompiled former [15-5-1 NMSA 1978](#) as [9-27-20 NMSA 1978](#), effective June 19, 2009.

**The 2017 amendment**, effective June 16, 2017, required the department of information technology to enter into the necessary agreements to provide a telecommunication network to all executive, legislative and judicial branches, allowed the department to provide a telecommunication network to educational institutions that request to be included in the network, required the department of information technology and the public education department to apply for federal reimbursements for telecommunication network services, and required the department of information technology to establish a rate structure and to charge participants in the telecommunication network according to that rate structure; after the heading, added the subsection designation "A" to the first paragraph of the section; in Subsection A, after "The department", deleted "of information technology", after "where feasible, a", deleted "central telephone system, including wide-area telephone service" and added "telecommunication network", after "the provision of a", deleted "central telephone system" and added "telecommunication network"; and added new Subsections B, C, and D.

**Repeals.** — [Laws 2017, ch. 7, § 10](#), repealed [Laws 2007, ch. 888 \[288\], § 3](#), effective June 16, 2017, which enacted amendments to this section but was not compiled because it could not be reconciled with [Laws 2007, ch. 290, § 20](#), which as the last act signed by the governor, was compiled into the NMSA 1978.

**The 2007 amendment**, effective July 1, 2007, required the department of information technology to enter into agreements to provide a central telephone system for state governmental branches, except for political subdivisions of the state.

### 9-27-21. Central telecommunication network services; staff; budget.

The telecommunications bureau of the enterprise services division of the department shall provide the staff and material necessary to properly and adequately operate the central telecommunication network. The budget for the central telecommunication network shall be approved as part of the total operating budget of the department.

**History:** [Laws 1963, ch. 181, § 2](#); [1953 Comp., § 6-1-25](#); [Laws 1965, ch. 225, § 2](#); [1977, ch. 247, § 62](#); [1978, ch. 124, § 12](#); [1980, ch. 151, § 18](#); [1983, ch. 301, § 58](#); [1978 Comp., § 15-5-2](#), recompiled and amended as § 9-27-21 by [Laws 2009, ch. 146, § 7](#); [2017, ch. 7, § 4](#).

## ANNOTATIONS

**Recompilations.** — [Laws 2009, ch. 146, § 7](#) recompiled and amended former [15-5-2 NMSA 1978](#) as [9-27-21 NMSA 1978](#), effective June 19, 2009.

**The 2017 amendment**, effective June 16, 2017, required the telecommunications bureau of the enterprise services division of the department of information technology to provide the staff and material necessary to operate the central telecommunication network; in the catchline, deleted "telephone" and added "telecommunication network"; in the first sentence, after

"adequately operate the central", deleted "telephone system" and added "telecommunication network"; and in the second sentence, after "budget for the central", deleted "telephone system" and added "telecommunication network".

**The 2009 amendment**, effective June 19, 2009, added "of the enterprise services division of the department" and after "operating budget of the", deleted "general services".

## 9-27-22. Charges for central telecommunication network services.

Departments, institutions and agencies participating in the central telecommunication network shall be charged a pro rata and equitable share of the total monthly costs of the service. This determination is to be made by the department. Toll calls not covered by the wide-area telephone service and supplemental equipment shall be segregated and paid for by agencies, institutions and departments making the calls or using the supplemental equipment.

**History:** 1953 Comp., § 6-1-26, enacted by Laws 1963, ch. 181, § 3; 1965, ch. 225, § 3; 1977, ch. 247, § 63; 1978, ch. 124, § 13; 1980, ch. 151, § 19; 1983, ch. 301, § 59; **2007, ch. 290, § 21**; 1978 Comp., § 15-5-3, recompiled as § 9-27-22 by **Laws 2009, ch. 146, § 10**; **2017, ch. 7, § 5**.

### ANNOTATIONS

**Recompilations.** — **Laws 2009, ch. 146, § 10** recompiled former **15-5-3** NMSA 1978 as **9-27-22** NMSA 1978, effective June 19, 2009.

**The 2017 amendment**, effective June 16, 2017, replaced "telephone system" with "telecommunication network" in the provision for charges for participating in the central telecommunication network; in the catchline, after "central", deleted "telephone" and added "telecommunication network"; in the first sentence, after "participating in the central", deleted "telephone system" and added "telecommunication network"; and in the second sentence, after "by the department", deleted "of information technology".

## 9-27-23. Deposit of money.

The department shall order the deposit or transfer monthly to a fund known as the "central telecommunication network fund" the amount of money owed by each department, institution and agency utilizing the central telecommunication network. State institutions and agencies shall adopt such accounting procedures as are prescribed by the department of finance and administration for the handling of payments with reference to the central telecommunication network.

**History:** 1953 Comp., § 6-1-27, enacted by Laws 1963, ch. 181, § 4; 1965, ch. 225, § 4; 1977, ch. 247, § 64; 1978, ch. 124, § 14; 1980, ch. 151, § 20; 1983, ch. 301, § 60; **2007, ch. 290, § 22**; 1978 Comp., § 15-5-4, recompiled as § 9-27-23 by **Laws 2009, ch. 146, § 10**; **2017, ch. 7, § 6**.

### ANNOTATIONS

**Recompilations.** — [Laws 2009, ch. 146, § 10](#) recompiled former [15-5-4 NMSA 1978](#) as [9-27-23 NMSA 1978](#), effective June 19, 2009.

**The 2017 amendment**, effective June 16, 2017, required the department of information technology to deposit the money that is owed by each department, institution and agency participating in the telecommunication network into the telecommunication network fund; after "The department", deleted "of information technology", after "known as the 'central'", deleted "telephone services" and added "telecommunication network", after "utilizing the central", deleted "telephone system" and added "telecommunication network", and after "reference to the central", deleted "telephone system" and added "telecommunication network".

## 9-27-24. Appropriation.

All income to the central telecommunication network fund is appropriated to carry out the purposes of Sections 9-27-20 through [9-27-25 NMSA 1978](#) or their successor recompiled sections. Payments from the central telecommunication network fund shall be made on vouchers signed by the secretary or the secretary's designee.

**History:** 1953 Comp., § 6-1-28, enacted by [Laws 1963, ch. 181, § 5](#); [1965, ch. 225, § 5](#); [1977, ch. 247, § 65](#); [1978, ch. 124, § 15](#); [1983, ch. 301, § 61](#); [1978 Comp., § 15-5-5](#), recompiled and amended as § 9-27-24 by [Laws 2009, ch. 146, § 8](#); [2017, ch. 7, § 7](#).

### ANNOTATIONS

**Recompilations.** — [Laws 2009, ch. 146, § 8](#) recompiled and amended former [15-5-5 NMSA 1978](#) as [9-27-24 NMSA 1978](#), effective June 19, 2009.

**The 2017 amendment**, effective June 16, 2017, provided that all income to the central telecommunication network be appropriated to carry out the purposes of the central telecommunication network; after "to the central", deleted "telephone services" and added "telecommunication network", after "Sections", deleted "15-5-1 through 15-5-6" and added "9-27-20 through 9-27-25", and after "from the central", deleted "telephone services" and added "telecommunication network".

**The 2009 amendment**, effective June 19, 2009, added "or their successor recompiled sections".

## 9-27-25. Participation or exclusion of agency, department or institution.

All departments, institutions and agencies of the state government to the extent that it is practical and feasible shall participate in the central telecommunication network. No agreement for any leased or purchased telephone service or for purchase of any telephone equipment shall be entered into by any department, institution or agency of the state participating in the central telecommunication network, except those institutions enumerated in Article 12, Section 11 of the constitution of New Mexico, except upon prior written approval of the secretary or the secretary's designee. If, on the basis of a technical survey, it is found to be infeasible or impractical to

include particular agencies, departments or institutions in the central telecommunication network, the secretary or the secretary's designee may exclude them. In the event of exclusion of any agency, department or institution, the secretary or the secretary's designee shall file a written statement, certifying the reasons therefor, with the state records center.

**History:** 1953 Comp., § 6-1-29, enacted by Laws 1963, ch. 181, § 6; 1965, ch. 225, § 6; 1973, ch. 79, § 1; 1977, ch. 247, § 66; 1978, ch. 124, § 16; 1980, ch. 151, § 21; 1983, ch. 301, § 62; 1978 Comp., § 15-5-6, recompiled and amended as § 9-27-25 by **Laws 2009, ch. 146, § 9; 2017, ch. 7, § 8.**

## ANNOTATIONS

**Recompilations.** — **Laws 2009, ch. 146, § 9** recompiled and amended former **15-5-6 NMSA 1978** as **9-27-25 NMSA 1978**, effective June 19, 2009.

**The 2017 amendment**, effective June 16, 2017, provided that every department, institution or agency of the state government shall participate in the central telecommunication network unless excluded by the secretary of information technology or the secretary's designee; and substituted "telecommunication network" for "telephone system" throughout the section.

**The 2009 amendment**, effective June 19, 2009, in the second sentence, deleted "director of the communications division" and added "secretary or the secretary's designee"; and in the last sentence, deleted "director of the communications division" and added "secretary or the secretary's designee".

### **9-27-26. Indian nations, tribes and pueblos; statewide broadband; right-of-way agreement.**

Indian nations, tribes and pueblos may connect to the statewide broadband network in exchange for a right-of-way agreement with the chief information officer. The chief information officer shall apply for reimbursements from the federal universal service fund pursuant to Section 254 of the federal Telecommunications Act of 1996, 47 U.S.C. 254, as such section existed on January 1, 2006, on behalf of Indian nations, tribes and pueblos that execute a right-of-way agreement.

**History:** **Laws 2017, ch. 7, § 9.**

## ANNOTATIONS

**Effective dates.** — Laws 2017, ch. 7 contained no effective date provision, but, pursuant to **N.M. Const., art. IV, § 23**, was effective June 16, 2017, 90 days after the adjournment of the legislature.

### **9-27-27. Library broadband infrastructure fund; created.**

A. The "library broadband infrastructure fund" is created in the state treasury. The fund consists of money appropriated by the legislature, federal money granted to the state for the purposes of the fund, income from investment of the fund and money otherwise accruing to the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The department of information technology shall administer the fund, and money in the fund is subject to appropriation by the legislature to the department of information technology to provide:

- (1) matching money for grants to bring broadband infrastructure to public, tribal and school libraries;
- (2) support for grant application preparation and compliance; and
- (3) planning and data acquisition services to support collaborative project implementation.

B. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of information technology or the secretary's authorized representative.

**History:** [Laws 2018, ch. 25, § 1.](#)

## ANNOTATIONS

**Effective dates.** — Laws 2018, ch. 25 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective May 16, 2018, 90 days after the adjournment of the legislature.