

9-21-1. Short title.

Sections 1 through 15 of this act [[9-21-1](#) to [9-21-15](#) NMSA 1978] may be cited as the "Indian Affairs Department Act".

9-21-2. Purpose.

The purpose of the Indian Affairs Department Act [[9-21-1](#) NMSA 1978] is to create a single, unified department to administer all laws and exercise all functions formerly administered and executed by the New Mexico office of Indian affairs.

9-21-3. Definitions.

As used in the Indian Affairs Department Act [[9-21-1](#) NMSA 1978]:

- A. "department" means the Indian affairs department; and
- B. "secretary" means the secretary of Indian affairs.

9-21-4. Department created.

The "Indian affairs Department" is created in the executive branch. The department is a cabinet department and includes the following divisions:

- A. the administrative services division; and
- B. the program services division.

9-21-5. Secretary of Indian affairs.

- A. The chief executive and administrative officer of the department is the "secretary of Indian affairs". The secretary shall be appointed by the governor with the consent of the senate. The secretary shall hold the 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's appointment.

9-21-6. 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 his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or any division of the department, except where authority conferred upon any division in the department is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:
 - (1) except as otherwise provided in the Indian Affairs Department Act [[9-21-1](#) NMSA 1978], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and rules;
 - (2) delegate authority to subordinates as necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;
 - (3) organize the department into those organizational units that will enable it to function most efficiently, subject to any 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 with the administration or execution of which the secretary is responsible, and to enforce those orders and instructions by appropriate administrative action or actions in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens 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, record-keeping and related clerical assistance to administratively attached agencies; and

(10) appoint, with the governor's consent, for each division, a "director". These appointed positions are exempt from the provisions of the Personnel Act [[10-9-1](#) NMSA 1978]. Persons appointed to these positions shall serve at the pleasure of the secretary.

C. 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.

D. Where functions of departments overlap, or a function assigned to one department could better be performed by another department, the 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. A rule promulgated by the director of a division in carrying out the functions and duties of the division shall not be effective until approved by the secretary. Unless otherwise provided by statute, a rule affecting a person or agency outside the department shall not 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 advance notice of hearing. All rules shall be filed in accordance with the State Rules Act [[14-4-1](#) NMSA 1978].

[9-21-7. Department; additional powers and duties.](#)

A. The department is the coordinating agency for intergovernmental and interagency programs concerning tribal governments and the state.

B. The department shall:

(1) investigate, study, consider and act upon the entire subject of Indian conditions and relations within New Mexico, including problems of health, economy and education and the effect of local, state and federal legislative, executive and judicial actions. The department shall collaborate with other state departments or agencies that have an interest or stake in the subject being investigated, studied or considered. In

performing its functions, the department shall provide an opportunity for the presentation and exchange of ideas in respect to Indian affairs of the state by all interested persons; and

(2) assist in setting the policy, and act as the clearinghouse, for all state programs affecting the Indian people of New Mexico.

C. The department may:

(1) hold hearings, conduct meetings, make investigations and confer with officials of local, state and federal agencies to secure cooperation between the local, state, federal and Indian tribal governments in the promotion of the welfare of the Indian people of New Mexico;:

(2) contract with tribal governments, public agencies or private persons to provide services and facilities for promoting the welfare of the Indian people of New Mexico; and

(3) solicit and accept gifts, grants, donations, bequests and devices.

9-21-8. Organizational units of the department; powers and duties specified by law; access to information.:

A. 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.

B. The department shall have access to all records, data and information of other state departments that are not specifically held confidential by law.

9-21-9. Division directors.

Except as otherwise provided by law, the secretary shall appoint, with the approval of the governor, "directors" of divisions established within the department. The directors so appointed are exempt from the Personnel Act [[10-9-1](#) NMSA 1978].

9-21-10. Bureau chiefs.

The secretary may establish within each division such "bureaus" as the secretary deems necessary to carry out the provisions of the Indian Affairs Department Act [[9-21-1](#) NMSA 1978]. The secretary shall appoint a "chief" to be the administrative head of a bureau. A chief and all subsidiary employees of the department are covered by the Personnel Act [[10-9-1](#) NMSA 1978] unless otherwise provided by law.

9-21-11. Administrative services division; duties.

The administrative services division shall provide administrative services to the department, including:

A. keeping all official records of the department;

B. providing clerical services in the areas of personnel and budget preparation; and

C. providing clerical, record-keeping and administrative support to agencies administratively attached to the department, at their request.

9-21-12. Program services division; duties.

The program services division shall provide program implementation and support for field programs and services.

9-21-13. Indian affairs commission created.

A. The "Indian affairs commission" is created. The commission shall consist of ten members who are residents of New Mexico appointed by the governor as follows:

(1) three members shall be Pueblo Indians;

- (2) three members shall be Navajo Indians;
- (3) two members shall be Apache Indians;
- (4) one member shall be an urban Indian; and
- (5) one member shall be a non-Indian.

B. Indian members, except the urban Indian member, shall be appointed from lists of names submitted by the all Indian pueblo council, the Jicarilla and Mescalero tribal councils and the Navajo Nation.

C. Members serve at the pleasure of the governor. Vacancies shall be filled by appointment by the governor for the unexpired term.

D. The governor shall appoint the chairman and the commission may select such other officers as the commission deems necessary.

E. Members may receive per diem and mileage pursuant to the Per Diem and Mileage Act [[10-8-1](#) NMSA 1978], but shall receive no other compensation, perquisite or allowance.

[9-21-14. Powers of the commission.](#)

The commission shall:

- A. conduct meetings to provide an opportunity for the presentation and exchange of ideas with respect to Indian affairs by any interested party that result in the promotion of the welfare of the Indian people;
- B. receive and disseminate information on issues that significantly impact the welfare of the Indian people;
- C. apprise the secretary of the conditions in Native American communities in New Mexico; and
- D. advise the secretary on policy matters related to the department's powers and duties.

[9-21-15. Preservation of Indian legends.](#)

The department may employ not more than two persons for each Indian tribe or pueblo in the state to record the legends of the tribe or pueblo in the English language for the purpose of making them available for dissemination to the public. Persons employed to record the legends shall be members of the tribe or pueblo, shall have knowledge of both English and the language spoken by the particular tribe or pueblo and shall be familiar with a means of recording the legends in the English language. The department may employ personnel and purchase recording equipment necessary to fulfill the purpose of this section.

[9-21-16. New Mexico office of Indian affairs; successor agency; duty.](#)

The New Mexico office of Indian affairs, or a successor agency, shall appoint the secretary or the secretary's designee to serve as a member of the interagency behavioral health purchasing collaborative and shall ensure that all behavioral health services, including mental health and substance abuse services funded, provided, contracted for or approved by the commission, are in compliance with the requirements of Section [9-7-6.4](#) NMSA 1978.

[9-21-17. Short title.](#)

This act [[9-21-17](#) to [9-21-24](#) NMSA 1978] may be cited as the "Tribal Infrastructure Act".

[9-21-18. Findings and purpose.](#)

A. The legislature finds that:

- (1) tribes lack basic infrastructure resulting in poor social, health and economic conditions of tribal communities;
- (2) adequate infrastructure such as water and wastewater systems, major water systems, electrical power

lines, communications, roads, health and emergency response facilities and infrastructure needed for economic development are essential to improved health, safety and welfare of all New Mexicans, including residents of tribal communities;

(3) local tribal efforts and resources have been insufficient to develop and maintain a consistent and adequate level of infrastructure in tribal communities;

(4) addressing the urgent need of replacing, improving and developing tribal infrastructure through the use of an alternative financing mechanism is a long-term cost savings benefit to both the state and the tribes; and

(5) adequate infrastructure development on tribal land will allow tribal members to achieve the basic conditions necessary to improve the quality of their lives.

B. The purposes of the Tribal Infrastructure Act [[9-21-17](#) NMSA 1978] are to:

(1) ensure adequate financial resources for infrastructure development for tribal communities;

(2) provide for the planning and development of infrastructure in an efficient and cost-effective manner; and

(3) develop infrastructure in tribal communities to improve the quality of life and encourage economic development.

[9-21-19. Definitions.](#)

As used in the Tribal Infrastructure Act [[9-21-17](#) NMSA 1978]:

A. "board" means the tribal infrastructure board;

B. "department" means the Indian affairs department;

C. "financial assistance" means providing grants or loans on terms and conditions approved by the board;

D. "governor" means the governor of New Mexico;

E. "project fund" means the tribal infrastructure project fund;

F. "qualified project" means a tribal infrastructure project selected by the board for financial assistance pursuant to the Tribal Infrastructure Act;

G. "tribe" means a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico or any of its governmental entities or subdivisions; and

H. "trust fund" means the tribal infrastructure trust fund.

[9-21-20. Tribal infrastructure board created.](#)

A. The "tribal infrastructure board" is created and is administratively attached to the department.

B. The board shall consist of nine voting members and four non-voting members.

C. The voting ex-officio members are:

(1) the secretary of Indian affairs, or the secretary's designee from the department, who shall be chair of the board;

(2) the secretary of finance and administration or the secretary's designee from the department of finance and administration;

- (3) the secretary of health or the secretary's designee from the department of health;
- (4) the secretary of environment or the secretary's designee from the department of environment; and
- (5) the executive director of the New Mexico finance authority or the executive director's designee from the New Mexico finance authority.

D. The following four voting members who have experience with capital projects development or administration from tribes shall be appointed by the governor:

- (1) one person who is a member of a pueblo;
- (2) one person who is a member of the Jicarilla Apache Nation;
- (3) one person who is a member of the Mescalero Apache Tribe; and
- (4) one person who is a member of the Navajo Nation.

E. There shall be four non-voting members as follows:

- (1) one representative from the federal bureau of Indian affairs, Albuquerque area office, designated by the regional director;
- (2) one representative from the federal bureau of Indian affairs Navajo area office designated by the regional director;
- (3) one representative from the Albuquerque area Indian health services designated by the area director; and
- (4) one representative from the Navajo area Indian health services designated by the area director.

F. The board shall meet at the call of the chair or whenever four voting members submit a request in writing to the chair, but not less than twice each calendar year. A majority of members constitutes a quorum for the transaction of business. The affirmative vote of at least a majority of a quorum shall be necessary for an action to be taken by the board.

G. Each member of the board appointed by the governor shall be appointed to a two-year term. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term.

H. Members of the board appointed by the governor may receive per diem and mileage as provided for non-salaried public officers in the Per Diem and Mileage Act [[10-8-1](#) NMSA 1978] and shall receive no other compensation, perquisite or allowance.

9-21-21. Board; duties.

The board shall:

- A. adopt rules governing terms, conditions and priorities for providing financial assistance to tribes, including developing application and evaluation procedures and forms and qualifications for applicants and for projects;
- B. provide financial assistance to tribes for qualified projects on terms and conditions established by the board;
- C. authorize funding for qualified projects, including:
 - (1) planning, designing, constructing, improving, expanding or equipping water and wastewater facilities,

major water systems, electrical power lines, communications infrastructure, roads, health infrastructure, emergency response facilities and infrastructure needed to encourage economic development;

(2) developing engineering feasibility reports for infrastructure projects;

(3) inspecting construction of qualified projects;

(4) providing special engineering services;

(5) completing environmental assessments or archaeological clearances and other surveys for infrastructure projects;

(6) acquiring land, easements or rights of way; and

(7) paying legal costs and fiscal agent fees associated with development of qualified projects.

[9-21-22. Tribal infrastructure trust fund; created; investment; distribution.](#)

A. The "tribal infrastructure trust fund" is created in the state treasury. The trust fund shall consist of money that is appropriated, donated or otherwise accrues to it. Money in the trust fund shall be invested by the state investment officer in the manner that land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Income from investment of the trust fund shall be credited to the fund. Money in the trust fund shall not be expended for any purpose, but an annual distribution from the trust fund shall be made to the project fund pursuant to this section.

B. On July 1 of each year in which adequate money is available in the trust fund, an annual distribution shall be made from the trust fund to the project fund in the amount of ten million dollars (\$10,000,000) until the distribution is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of the trust fund for the immediately preceding five calendar years. Thereafter, the amount of the annual distribution shall be four and seven-tenths percent of the average of the year-end market values of the trust fund for the immediately preceding five calendar years.

[9-21-23. Tribal infrastructure project fund; created; purpose; appropriations.](#)

A. The "tribal infrastructure project fund" is created in the state treasury and:

(1) the department of finance and administration shall administer the project fund;

(2) the project fund shall consist of:

(a) distributions made to it from the trust fund;

(b) payments of principal and interest on loans for qualified projects;

(c) other money appropriated by the legislature or distributed or otherwise allocated to the project fund for the purpose of supporting qualified projects; and

(d) income from investment of the money in the project fund that shall be credited to the project fund;

(3) balances in the project fund at the end of a fiscal year shall not revert to the trust fund or to the general fund; and

(4) the project fund may consist of subaccounts as determined to be necessary by the department of finance and administration.

B. The department of finance and administration may establish procedures and adopt rules as required to administer the project fund and to originate grants or loans for qualified projects approved by the board.

C. Beginning in fiscal year 2006 and in subsequent years, the lesser of one percent of the project fund or

one hundred thousand dollars (\$100,000) is appropriated from the project fund to the department of finance and administration for expenditure in the fiscal year in which it is appropriated, to administer the project fund. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall revert to the project fund.

D. Beginning in fiscal year 2006 and in each subsequent year, the lesser of five percent of the project fund or five hundred thousand dollars (\$500,000) is appropriated from the project fund to the Indian affairs department for expenditure in the fiscal year in which it is appropriated to administer the Tribal Infrastructure Act, to pay per diem and mileage as required by that act and for operation of the board. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall revert to the project fund.

E. The balance in the project fund not otherwise appropriated in this section is appropriated to the department of finance and administration for expenditure in fiscal year 2006 and in subsequent fiscal years to carry out the provisions of the Tribal Infrastructure Act [[9-21-17](#) NMSA 1978] by providing grants or loans for qualified projects. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall revert to the project fund.

[9-21-24. Legislative oversight; rule review; report.](#)

A. Rules proposed by the board and the department of finance and administration pursuant to the Tribal Infrastructure Act shall be reviewed by the legislative interim Indian affairs committee prior to approval.

B. The legislative interim Indian affairs committee shall be briefed by the board on grant and loan proposals submitted to the board and shall review the list of grants and loans made by the board.

C. The board shall report to the legislative interim Indian affairs committee no later than October 1 of each year regarding the total expenditures from the project fund for the previous fiscal year, the purposes for which expenditures were made, an analysis of the progress of the projects funded and proposals for legislative action in the subsequent legislative session.