= new	= delete
underscored material	[bracketed naterial]

2

3

4

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CENATE	DIII	222

## 46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

Linda M. Lopez

INTRODUCED BY

## AN ACT

RELATING TO STATE GOVERNMENT; AMENDING THE GOVERNMENTAL DISPUTE RESOLUTION ACT; CREATING AN OFFICE OF PUBLIC FACILITATION; AUTHORIZING POWERS AND DUTIES; CREATING A FUND.

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

Section 1. Section 12-8A-1 NMSA 1978 (being Laws 2000, Chapter 65, Section 1) is amended to read:

"12-8A-1. SHORT TITLE. -- [This act] Chapter 12, Article 8A NMSA 1978 may be cited as the "Governmental Dispute Resolution Act". "

Section 2. Section 12-8A-2 NMSA 1978 (being Laws 2000, Chapter 65, Section 2) is amended to read:

DEFINITIONS. -- As used in the Governmental "12-8A-2. Dispute Resolution Act:

"agency" means the state, political subdivisions . 143353. 1

. 143353. 1

1	of the state and any of their branches, agencies, departments,	
2	boards, instrumentalities or institutions;	
3	B. "alternative dispute resolution" means a process	
4	other than litigation used to resolve disputes, including	
5	mediation, facilitation, regulatory negotiation, fact-finding,	
6	conciliation, early neutral evaluation and policy dialogues;	
7	[ <del>and</del> ]	
8	C. "collaborative process" means the method by	
9	which parties to an issue under consideration work together	
10	with the aid of a neutral to achieve a resolution of the issue;	
11	D. "director" means the director of the office;	
12	E. "fund" means the public facilitation fund;	
13	[C.] $F.$ "neutral" means a person who provides	
14	services as a mediator, fact-finder or conciliator or who	
15	otherwise aids parties to resolve disputes; and	
16	G. "office" means the office of public	
17	facilitation."	
18	Section 3. Section 12-8A-3 NMSA 1978 (being Laws 2000,	
19	Chapter 65, Section 3) is amended to read:	
20	"12-8A-3. ALTERNATIVE DISPUTE RESOLUTIONAUTHORIZATION-	
21	PROCEDURES AGENCY COORDI NATORS	
22	A. An agency may use [an] alternative dispute	
23	resolution [procedure] to resolve any dispute, issue or	
24	controversy involving any of the agency's operations, programs	

or functions, including formal and informal adjudications,

[rulemakings] rule making, enforcement actions, permitting, certifications, licensing, policy development and contract administration. Alternative dispute resolution [procedures are] is voluntary and may be used at the discretion of the agency or at the request of [an interested] a party to a dispute.

- B. An agency that chooses to use [an] alternative dispute resolution [process] shall develop an agreement with interested parties that:
- (1) provides for the appointment of neutrals, consultants or experts agreed upon by all parties and serving at the will of all parties. A neutral, consultant or expert shall have no official, financial or personal conflict of interest with any issue or party in controversy unless the conflict of interest is fully disclosed in writing to all of the parties and all parties agree that the person may continue to serve;
- (2) specifies any limitation periods applicable to the commencement or conclusion of formal administrative or judicial proceedings and, if applicable, specifies any time periods that the parties have agreed to waive:
- (3) establishes rules for the alternative dispute resolution procedures; and
- $\hspace{1cm} \textbf{(4)} \hspace{0.2cm} \textbf{sets forth how costs and expenses shall be} \\ . \hspace{0.2cm} \textbf{143353.1}$

2

4

5

7

8

9

10

11

equitably apportioned among the parties.

- C. An agreement, developed pursuant to Subsection B of this section, may be included in an enforcement order, stipulation, contract, permit or other document entered into or issued by the agency.
- D. The administrative head of an agency [may] that has more than twenty-five full-time employees shall designate an employee as the alternative dispute resolution coordinator for that agency. The coordinator shall:
- (1) make recommendations to the agency's executive staff on issues and disputes that are suitable for alternative dispute resolution;
- (2) analyze the agency's enabling statutes and rules to determine whether they contain impediments to the use of alternative dispute resolution [procedures] and suggest any modifications:
- (3) monitor the agency's use of alternative dispute resolution [procedures];
- (4) arrange for <u>the</u> training of agency staff in alternative dispute resolution procedures; [and]
- (5) provide information about the agency's alternative dispute resolution procedures to the agency's staff and to the public;
- (6) coordinate the agency's alternative dispute resolution program;

. 143353. 1

. 143353. 1

1	(7) inform and consult with the office
2	about the activities of the agency's alternative dispute
3	resolution program; and
4	(8) report annually on August 1 the
5	agency's alternative dispute resolution activities.
6	E. Any agency may utilize the services of the
7	office to carry out its responsibilities."
8	Section 4. A new section of the Governmental Dispute
9	Resolution Act, Section 12-8A-6 NMSA 1978, is enacted to read:
10	"12-8A-6. [ <u>NEW MATERIAL</u> ] OFFICE OF PUBLIC FACILITATION
11	CREATED POWERS DUTI ES
12	A. The "office of public facilitation" is created,
13	headed by a director appointed by and serving at the pleasure
14	of the governor. The director shall have professional
15	training in and a minimum of ten years primary experience with
16	dispute resolution and with the operation of state government.
17	The office is administratively attached to the department of
18	finance and administration.
19	B. The office of public facilitation shall:
20	(1) develop and promulgate to agencies a
21	manual of procedures for engaging and utilizing alternative
22	dispute resolution and accessing services of the office;
23	(2) when requested, assist the office of the
24	governor, all public agencies and the legislature on issues of
25	water, natural resource management, environmental health and

24

25

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

1

2

3

public health and other statewide issues that may benefit from
the collaborative process;

- (3) when requested, assist agencies in streamlining licensing, permitting and credentialing functions;
- (4) provide research and fact-finding services and resources for the coordination and resolution of issues involving one or more agencies;
- (5) provide training for agency staff in alternative dispute resolution and collaborative process techniques and procedures; and
- (6) assist local governments with community issues when requested.
- C. The office may enter into joint powers agreements with agencies to provide services on individual issues or continuing services on a variety of subjects and issues, and the office may contract with individuals and entities to carry out the purposes of the Governmental Dispute Resolution Act.
- D. The office may accept federal, local and private grants and bequests, donations, gifts and contributions for the purposes of the Governmental Dispute Resolution Act.
- E. The office shall adopt rules necessary to carry out the provisions of the Governmental Dispute Resolution Act."
- Section 5. A new section of the Governmental Dispute

  Resolution Act, Section 12-8A-7 NMSA 1978, is enacted to read:

  . 143353.1

[bracketed material]

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

"12-8A-7. [NEW MATERIAL] FUND CREATED--PURPOSE. -- The "public facilitation fund" is created in the state treasury. Money in the fund is appropriated to carry out the purpose of the Governmental Dispute Resolution Act. The fund shall consist of legislative appropriations, federal and local government grants and gifts, grants, donations and other receipts received by the office under and for the purposes of the Governmental Dispute Resolution Act. The fund shall be invested as other state funds and earnings of the fund shall be deposited in the general fund. Money in the fund shall not revert at the end of any fiscal year but shall remain in the fund for the purposes of the Governmental Dispute Resolution Expenditures from the fund shall be upon vouchers signed Act. by the director or his authorized representative on warrants issued by the department of finance and administration."

- 7 -