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AN ACT

RELATING TO STATE GOVERNMENT; AMENDING AND CHANGING THE NAME OF THE GOVERNMENTAL DISPUTE RESOLUTION ACT; ESTABLISHING A BUREAU KNOWN AS THE OFFICE OF ALTERNATIVE DISPUTE PREVENTION AND RESOLUTION IN THE RISK MANAGEMENT DIVISION OF THE GENERAL SERVICES DEPARTMENT; PRESCRIBING THE DUTIES AND POWERS OF THE OFFICE; CREATING AN ADVISORY COUNCIL; MAKING AN APPROPRIATION.

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.--Chapter 12, Article 8A NMSA 1978 may be cited as the "Governmental Dispute Prevention and Resolution Act"."

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

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

A. "agency" means the state and its agencies, departments, boards, instrumentalities or institutions that are insured by the division;

B. "alternative dispute resolution" means a process other than litigation used to prevent or resolve disputes, including mediation, facilitation, regulatory

1 negotiation, settlement conferences, binding and nonbinding
2 arbitration, fact-finding, conciliation, early neutral
3 evaluation and policy dialogues;

4 C. "council" means the alternative dispute
5 prevention and resolution advisory council;

6 D. "department" means the general services
7 department;

8 E. "division" means the risk management division
9 of the department;

10 F. "interested party" means a person having or
11 anticipating a dispute with any agency, or a representative
12 of that person;

13 G. "neutral party" means a person who is trained
14 to provide services as a mediator, arbitrator, facilitator,
15 fact-finder or conciliator who aids parties to prevent or
16 resolve disputes;

17 H. "office" means the bureau known as the office
18 of alternative dispute prevention and resolution in the
19 division; and

20 I. "public facilitation" means collaboration with
21 identified stakeholders concerning public policy issues,
22 including policy dialogues and other techniques to seek
23 consensus, reconcile differences or prevent disputes from
24 arising in the development or implementation of public
25 administration issues."

1 Section 3. Section 12-8A-3 NMSA 1978 (being Laws 2000,
2 Chapter 65, Section 3) is amended to read:

3 "12-8A-3. ALTERNATIVE DISPUTE RESOLUTION--
4 AUTHORIZATION--PROCEDURES--AGENCY COORDINATORS.--

5 A. An agency shall provide interested parties with
6 access to alternative dispute resolution procedures to
7 prevent or resolve any dispute, issue or controversy
8 involving any of the agency's operations, policies, programs
9 or functions, including formal and informal adjudications,
10 rulemakings, enforcement actions, permitting, certifications,
11 licensing, policy development and contract administration.
12 Alternative dispute resolution procedures are voluntary and
13 may be initiated at the request of the agency or an
14 interested party to a dispute. Either party may decline to
15 participate in a requested or offered alternative dispute
16 resolution activity.

17 B. An agency that participates in alternative
18 dispute resolution shall develop a written agreement to be
19 signed by interested parties that:

20 (1) provides for the appointment of neutral
21 parties, consultants or experts agreed upon by all parties
22 and serving at the will of all parties. A neutral party,
23 consultant or expert shall have no official, financial or
24 personal conflict of interest with any issue or party in
25 controversy unless the conflict of interest is fully

1 disclosed in writing to all of the parties and all parties
2 agree that the person may continue to serve;

3 (2) specifies any limitation periods
4 applicable to the commencement or conclusion of formal
5 administrative or judicial proceedings and, if applicable,
6 specifies any time periods that the parties have agreed to
7 waive;

8 (3) contains provisions for alternative
9 dispute resolution that conform with rules promulgated by the
10 division; and

11 (4) sets forth how costs and expenses of the
12 procedure chosen shall be equitably apportioned among the
13 parties.

14 C. An agreement, developed pursuant to Subsection
15 B of this section, may be included in an enforcement order,
16 stipulation, contract, permit or other document entered into
17 or issued by the agency.

18 D. The administrative head of an agency may
19 designate an employee as the alternative dispute resolution
20 coordinator for that agency. The coordinator shall:

21 (1) make recommendations to the agency's
22 executive staff on issues and disputes that are suitable for
23 alternative dispute resolution;

24 (2) analyze the agency's enabling statutes
25 and rules to determine whether they contain impediments to

1 the use of alternative dispute resolution or inconsistencies
2 with rules promulgated by the office and suggest any
3 modifications;

4 (3) monitor the agency's use of alternative
5 dispute resolution;

6 (4) arrange for training of agency staff in
7 alternative dispute resolution;

8 (5) respond to inquiries from the office or
9 council concerning the agency's use of alternative dispute
10 resolution;

11 (6) make recommendations to the office and
12 council concerning development and implementation of rules,
13 standards and educational materials;

14 (7) serve as the agency's liaison with the
15 office and the council; and

16 (8) provide information about the office's
17 rules and the agency's alternative dispute resolution
18 procedures to the agency's staff and to the public."

19 Section 4. Section 12-8A-4 NMSA 1978 (being Laws 2000,
20 Chapter 65, Section 4) is amended to read:

21 "12-8A-4. AGENCY BUDGETS--CONTRACTS FOR SERVICES.--

22 A. An agency shall take fiscal actions necessary
23 to achieve the objectives of the Governmental Dispute
24 Prevention and Resolution Act and pay for costs incurred in
25 taking those actions, including reasonable fees for training,

1 policy review, system design, evaluation and the use of
2 impartial third parties. Unless specifically prohibited by
3 law, an agency may request category transfers pursuant to
4 Sections 6-3-23 through 6-3-25 NMSA 1978 for the purpose of
5 paying the necessary costs incurred in meeting the objectives
6 of the Governmental Dispute Prevention and Resolution Act.

7 B. An agency may contract with another agency or
8 with a private entity for any service necessary to meet the
9 objectives of the Governmental Dispute Prevention and
10 Resolution Act."

11 Section 5. Section 12-8A-5 NMSA 1978 (being Laws 2000,
12 Chapter 65, Section 5) is amended to read:

13 "12-8A-5. EFFECT ON OTHER LAWS.--Nothing in the
14 Governmental Dispute Prevention and Resolution Act and rules,
15 agreements and procedures developed pursuant to that act:

16 A. limits other dispute prevention or resolution
17 procedures available to an agency;

18 B. denies a person a right granted under federal
19 or other state law, including a right to an administrative or
20 judicial hearing;

21 C. waives immunity from suit or affects a waiver
22 of immunity from suit contained in any other law;

23 D. waives immunity granted under the eleventh
24 amendment to the constitution of the United States;

25 E. authorizes or prohibits binding arbitration as

1 a method of alternative dispute resolution when mutually
2 agreed to in writing by the interested parties;

3 F. authorizes or requires an agency to take any
4 action that is inconsistent or contrary to any law or rule;

5 G. authorizes or requires any meeting, otherwise
6 required to be open to the public, to be closed;

7 H. authorizes or requires any record, otherwise
8 open to public inspection, to be sealed; or

9 I. shall be interpreted to create an additional
10 layer of administrative process or to discourage or impede
11 the use of alternative dispute resolution."

12 Section 6. A new section of the Governmental Dispute
13 Prevention and Resolution Act is enacted to read:

14 "ALTERNATIVE DISPUTE PREVENTION AND RESOLUTION ADVISORY
15 COUNCIL CREATED.--

16 A. The "alternative dispute prevention and
17 resolution advisory council" is created in the division. The
18 council consists of nine voting members as follows:

19 (1) the secretary of general services;

20 (2) the secretary of finance and
21 administration;

22 (3) the director of the state personnel
23 office;

24 (4) the superintendent of regulation and
25 licensing;

1 (5) the cabinet secretary or agency head of
2 four other executive branch agencies to be appointed by the
3 governor from among the ten agencies with the highest
4 occurrence of public liability claims per authorized number
5 of staff, no more than two of whom are cabinet secretaries;
6 and

7 (6) the director of the division, who shall
8 serve as chair of the council.

9 B. An agency head may designate a representative
10 to serve on the council.

11 C. The council shall meet at least twice each
12 year."

13 Section 7. A new section of the Governmental Dispute
14 Prevention and Resolution Act is enacted to read:

15 "ALTERNATIVE DISPUTE PREVENTION AND RESOLUTION ADVISORY
16 COUNCIL--DUTIES.--The council shall:

17 A. review information about the use of alternative
18 dispute resolution, including referrals, and make
19 recommendations to the office to improve the effectiveness of
20 alternative dispute resolution programs;

21 B. develop strategies to encourage and expand the
22 use of public facilitation in government operations;

23 C. recommend to the division appropriate training
24 standards and schedules for neutral parties and agency
25 managers and supervisors;

1 D. review and recommend standards and rules to the
2 division to foster participation in alternative dispute
3 resolution and minimize conflict in the discussion of issues
4 under consideration by interested parties; and

5 E. present an annual report to the department, the
6 governor and the legislature by December 1 of each year on
7 the use, cost and success of alternative dispute resolution
8 programs."

9 Section 8. A new section of the Governmental Dispute
10 Prevention and Resolution Act is enacted to read:

11 "OFFICE OF ALTERNATIVE DISPUTE PREVENTION AND
12 RESOLUTION--CREATED--POWERS--DUTIES.--

13 A. The "office of alternative dispute prevention
14 and resolution" is created as a bureau of the division.

15 B. In order to promote alternative dispute
16 resolution, the office shall:

17 (1) organize and manage alternative dispute
18 resolution programs for agencies, employees, vendors,
19 businesses regulated by governmental entities and other
20 interested parties;

21 (2) coordinate the use of neutral parties to
22 facilitate alternative dispute resolution for interested
23 parties and training for agency staff;

24 (3) implement development and use of
25 alternative dispute resolution strategies;

1 (4) provide staff support for the council;

2 (5) maintain information and educate
3 government officials about training and use of alternative
4 dispute resolution and referrals; and

5 (6) prepare an annual report for review and
6 presentation by the council on the use, cost and success of
7 alternative dispute resolution programs."

8 Section 9. APPROPRIATION.--One hundred eighty-five
9 thousand dollars (\$185,000) is appropriated from the public
10 liability fund to the risk management division of the general
11 services department for expenditure in fiscal year 2008 for
12 three full-time employees for the office of alternative
13 dispute prevention and resolution for the purpose of
14 implementing the Governmental Dispute Prevention and
15 Resolution Act. Any unexpended or unencumbered balance
16 remaining at the end of fiscal year 2008 shall revert to the
17 public liability fund.

18 Section 10. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2007. _____

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