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SENATE BILL 67

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

John C. Ryan

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; ENACTING THE ADMINISTRATIVE HEARINGS ACT; CREATING THE ADMINISTRATIVE HEARINGS OFFICE; PROVIDING POWERS AND DUTIES; PRESCRIBING QUALIFICATIONS FOR THE CHIEF HEARING OFFICER AND HEARING OFFICERS; CONSOLIDATING HEARING OFFICERS FROM ALL DEPARTMENTS AND OTHER STATE AGENCIES; PROVIDING FOR THE TRANSFER OF FUNCTIONS, PERSONNEL, MONEY, APPROPRIATIONS, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES.

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

**SECTION 1. SHORT TITLE.**--This act may be cited as the "Administrative Hearings Act".

**SECTION 2. PURPOSE.**--The purpose of the Administrative Hearings Act is to consolidate under one administrative hearings office the hearing officers and hearing functions of

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1 all state agencies.

2 SECTION 3. DEFINITIONS.--As used in the Administrative  
3 Hearings Act:

4 A. "agency" means any agency, board, commission,  
5 department, institution or officer of the state government  
6 except the judicial and legislative branches of the state  
7 government;

8 B. "chief" means the chief hearing officer; and

9 C. "office" means the administrative hearings  
10 office.

11 SECTION 4. ADMINISTRATIVE HEARINGS OFFICE--CREATED--  
12 ADMINISTRATIVE ATTACHMENT--CHIEF AND HEARING OFFICERS--  
13 APPOINTMENT--QUALIFICATIONS--OATH OF OFFICE--FULL-TIME  
14 EMPLOYMENT.--

15 A. The "administrative hearings office" is created  
16 and is administratively attached to the general services  
17 department.

18 B. The head of the office is the "chief hearing  
19 officer". By August 1, 2011, the governor shall appoint an  
20 interim chief from among current hearing officers who are  
21 licensed to practice law in New Mexico. Beginning July 1, 2012  
22 and thereafter, the chief shall be appointed by the governor,  
23 with the advice and consent of the senate, for a six-year term.  
24 A chief may serve more than one term.

25 C. The chief may be removed only for malfeasance,

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1 misfeasance or neglect of duty. If a vacancy occurs in the  
2 position of chief, it shall be filled by appointment by the  
3 governor for the remainder of the unexpired term.

4 D. Except for the interim chief, at the time of  
5 appointment, the chief shall have been admitted to practice law  
6 in New Mexico for at least twelve years, with at least ten  
7 years' experience in administrative law.

8 E. The chief and other hearing officers shall:

9 (1) take the oath of office required by the  
10 constitution of New Mexico. Once a code of conduct is adopted,  
11 the chief and all other hearing officers shall sign the code of  
12 conduct and file it with the office. The code of conduct shall  
13 be reviewed and signed annually; and

14 (2) devote themselves full time to the duties  
15 of the office and shall not engage in the private practice of  
16 law.

17 SECTION 5. CHIEF HEARING OFFICER--POWERS AND DUTIES.--

18 A. The chief:

19 (1) shall supervise and manage the office;

20 (2) shall employ hearing officers and other  
21 staff as necessary to carry out the duties of the office;

22 (3) shall assign hearing officers in any case  
23 referred to the office, giving preference to hearing officers  
24 with subject matter expertise and taking into consideration  
25 possible conflicts of interest;

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1 (4) shall ensure the decisional independence  
2 of each hearing officer;

3 (5) shall adopt and promulgate a code of  
4 conduct for hearing officers; and

5 (6) may enter into contracts.

6 B. To better manage resources and limit costs to  
7 the office, a contract attorney shall not act as a hearing  
8 officer unless authorized by the chief.

9 SECTION 6. HEARING OFFICERS--APPOINTMENT--  
10 QUALIFICATIONS.--Hearing officers are subject to the provisions  
11 of the Personnel Act. At the time of employment, a hearing  
12 officer shall have been admitted to practice law in New Mexico  
13 for at least seven years, with at least five years' experience  
14 in administrative law.

15 SECTION 7. CONDUCT OF ADMINISTRATIVE HEARINGS--AGENCY  
16 COOPERATION.--

17 A. Every administrative hearing shall be conducted  
18 as provided by the law applicable to the case being heard.  
19 When the office accepts a request for a hearing officer, the  
20 requesting agency shall take no further action with respect to  
21 the matter, except as party litigant. Nothing in this  
22 subsection shall be construed to prevent a termination or  
23 modification of the proceeding by an agency prior to the  
24 issuance of a final decision or recommendation by the hearing  
25 officer.

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1           B. Judicial review of an agency decision reviewed  
2 by the office shall be in accordance with the law applicable to  
3 the case being heard.

4           C. All agencies shall cooperate fully with the  
5 office in the discharge of the office's duties.

6           D. Except as otherwise provided in this section,  
7 all hearings for which a hearing officer may or shall be  
8 appointed, as required by law or rule of an agency, shall be  
9 conducted by the office.

10          E. A rulemaking proceeding may be subject to the  
11 Administrative Hearings Act at the request of an agency head.

12          F. The Administrative Hearings Act shall not apply  
13 if an agency head hears the permitting or adjudicatory matter  
14 without delegation or assignment to a hearing officer.

15           **SECTION 8. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,**  
16 **FUNCTIONS, APPROPRIATIONS AND PROPERTY--CONTRACTUAL**  
17 **OBLIGATIONS--STATUTORY REFERENCES.--**

18           A. As used in this section, "agency" means any  
19 agency, board, commission, department, institution or officer  
20 of the state government except the judicial and legislative  
21 branches of the state government.

22           B. On July 1, 2011, all agency hearing officers,  
23 hearing examiners and support staff for those positions shall  
24 become employees of the administrative hearings office.

25           C. On July 1, 2011, all functions, records,

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1 furniture, equipment and other property, appropriations and  
2 money attributable to agency hearing officers, hearing  
3 examiners and support staff for those positions shall be  
4 transferred to the administrative hearings office. The  
5 administrative hearings office personnel and property shall not  
6 occupy a new physical office location until practicable.

7 D. On July 1, 2011, all contractual obligations of  
8 agency hearing officers, hearing examiners and support staff  
9 for those positions shall be transferred to the administrative  
10 hearings office.

11 E. All agency hearing officers and hearing  
12 examiners transferred to the administrative hearings office  
13 pursuant to this section shall be classified as hearing  
14 officers, regardless of the minimum qualifications listed in  
15 Section 6 of the Administrative Hearings Act.

16 F. On July 1, 2011, all references in the law to  
17 agency hearing officers or hearing examiners shall be deemed to  
18 be references to agency hearing officers as provided by the  
19 Administrative Hearings Act and all references in the law to  
20 administrative hearings shall be deemed to be references to  
21 administrative hearings as provided by the Administrative  
22 Hearings Act. Administrative hearings shall be conducted by  
23 the administrative hearings office pursuant to the provisions  
24 of the Administrative Hearings Act.

25 SECTION 9. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2011.

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