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HOUSE BILL 301

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Nate Gentry

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 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 executive state agencies subject to that act.

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

4 A. "administrative hearing" means a proceeding
5 before an agency, including ratemaking and licensing, in which
6 legal rights, duties or privileges of a party are required by
7 law or rule of an agency to be determined by an agency after an
8 opportunity for a trial-type hearing;

9 B. "agency" means any agency, board, commission,
10 department, institution or officer of state government except
11 the judicial and legislative branches of the state government,
12 the public regulation commission and the workers' compensation
13 administration;

14 C. "chief" means the chief hearing officer; and

15 D. "office" means the administrative hearings
16 office.

17 SECTION 4. ADMINISTRATIVE HEARINGS OFFICE--CREATED--
18 ADMINISTRATIVE ATTACHMENT--CHIEF AND HEARING OFFICERS--
19 APPOINTMENT--QUALIFICATIONS--OATH OF OFFICE--FULL-TIME
20 EMPLOYMENT.--

21 A. The "administrative hearings office" is created
22 and is administratively attached to the regulation and
23 licensing department.

24 B. The head of the office is the "chief hearing
25 officer". By August 1, 2012, the governor shall appoint an

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1 interim chief from among current hearing officers who are
2 licensed to practice law in New Mexico. Beginning July 1, 2013
3 and thereafter, the chief shall be appointed by the governor,
4 with the advice and consent of the senate, for a four-year
5 term. A chief may serve more than one term with the advice and
6 consent of the senate.

7 C. Except for the interim chief, at the time of
8 appointment, the chief shall be licensed to practice law in New
9 Mexico and have at least twelve years' experience as a
10 practicing attorney, with at least ten years' experience in
11 administrative law.

12 D. Hearing officers are subject to the provisions
13 of the Personnel Act. At the time of employment, a hearing
14 officer shall be licensed to practice law in New Mexico and
15 have at least five years' experience as a practicing attorney.
16 The chief may give preference to candidates with administrative
17 law experience and establish other minimum qualifications and
18 preferences.

19 E. The chief and other hearing officers shall:

20 (1) take the oath of office required by the
21 constitution of New Mexico. Once a code of conduct is adopted,
22 the chief and all other hearing officers shall sign the code of
23 conduct and file it with the office. The code of conduct shall
24 be reviewed and signed annually; and

25 (2) devote themselves full time to the duties

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1 of the office and shall not engage in the private practice of
2 law.

3 F. The Administrative Hearings Act shall not apply
4 to hearing officers or hearing examiners who are funded in
5 whole or in part by the federal government or to administrative
6 hearings funded in whole or in part by the federal government.

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

8 A. The chief:

9 (1) shall supervise and manage the office;

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

12 (3) shall assign hearing officers in any case
13 referred to the office, giving preference to hearing officers
14 with subject matter expertise and taking into consideration
15 possible conflicts of interest;

16 (4) shall ensure the decisional independence
17 of each hearing officer;

18 (5) shall adopt and promulgate a code of
19 conduct for hearing officers; and

20 (6) may enter into contracts.

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

24 SECTION 6. CONDUCT OF ADMINISTRATIVE HEARINGS--AGENCY
25 COOPERATION.--

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1 A. Every administrative hearing shall be conducted
2 as provided by the law applicable to the case being heard.
3 Except for the rules relating to discovery, the technical rules
4 of evidence and the Rules of Civil Procedure for the District
5 Courts do not apply to administrative hearings before the chief
6 or hearing officers. The rules relating to discovery shall
7 only apply to the parties to the hearings.

8 B. When the office accepts a request for a hearing
9 officer, the requesting agency shall take no further action
10 with respect to the matter, except as party litigant. Nothing
11 in this subsection shall be construed to prevent a termination
12 or modification of the proceeding by an agency prior to the
13 issuance of a final decision or recommendation by the hearing
14 officer.

15 C. Judicial review of an agency decision reviewed
16 by the office shall be in accordance with the law applicable to
17 the case being heard.

18 D. All agencies shall cooperate fully with the
19 office in the discharge of the office's duties.

20 E. Except as otherwise provided in this section,
21 all hearings for which a hearing officer may or shall be
22 appointed, as required by law or rule of an agency, shall be
23 conducted by the office.

24 F. A rulemaking proceeding may be subject to the
25 Administrative Hearings Act at the request of an agency head.

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1 G. The Administrative Hearings Act shall not apply
2 if an agency head hears the administrative hearing without
3 delegation or assignment to a hearing officer.

4 **SECTION 7. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,**
5 **FUNCTIONS, APPROPRIATIONS AND PROPERTY--CONTRACTUAL**
6 **OBLIGATIONS--STATUTORY REFERENCES.--**

7 A. As used in this section, "agency" means any
8 agency, board, commission, department, institution or officer
9 of state government except the judicial and legislative
10 branches of the state government, the public regulation
11 commission and the workers' compensation administration.

12 B. On July 1, 2012, all positions the primary duty
13 of which is to preside over and issue final or proposed
14 decisions in administrative hearings or the supervision of such
15 positions, as determined by the state personnel director, and
16 support staff for those positions shall be transferred to the
17 administrative hearings office and the incumbents in the
18 transferred positions shall become employees of the
19 administrative hearings office; provided, however, that
20 positions funded wholly or in part by the federal government
21 shall not be transferred to the office.

22 C. On July 1, 2012, all functions, records,
23 furniture, equipment and other property, appropriations and
24 money that the state budget director determines to be
25 attributable to agency hearing officers, hearing examiners and

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1 support staff for those positions to be transferred to the
2 administrative hearings office shall be transferred to the
3 administrative hearings office. The administrative hearings
4 office personnel and property shall not occupy a new physical
5 office location until practicable.

6 D. On July 1, 2012, all contractual obligations of
7 an agency that the state budget director determines to be
8 attributable to hearing officers, hearing examiners and support
9 staff for those positions transferred to the administrative
10 hearings office shall be transferred to the administrative
11 hearings office.

12 E. All agency hearing officers and hearing
13 examiners transferred to the administrative hearings office
14 pursuant to this section shall be classified as hearing
15 officers, regardless of the minimum qualifications listed in
16 Subsection E of Section 4 of the Administrative Hearings Act.

17 F. On July 1, 2012, all references in the law to
18 agency hearing officers or hearing examiners subject to the
19 Administrative Hearings Act shall be deemed to be references to
20 agency hearing officers as provided by the Administrative
21 Hearings Act and all references in the law to administrative
22 hearings subject to the Administrative Hearings Act shall be
23 deemed to be references to administrative hearings as provided
24 by the Administrative Hearings Act. Administrative hearings
25 shall be conducted by the administrative hearings office

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1 pursuant to the provisions of the Administrative Hearings Act.

2 SECTION 8. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2012.

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