

1 SENATE BILL 371

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Antonio Maestas and Christine Chandler

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10 AN ACT

11 RELATING TO THE OFFICE OF THE ATTORNEY GENERAL; CREATING AN  
12 EXCEPTION FROM THE PERSONNEL ACT FOR EMPLOYEES OF THE OFFICE OF  
13 THE ATTORNEY GENERAL; EXPANDING THE SCOPE OF THE DISTRICT  
14 ATTORNEY PERSONNEL AND COMPENSATION ACT TO INCLUDE EMPLOYEES OF  
15 THE OFFICE OF THE ATTORNEY GENERAL.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 10-9-4 NMSA 1978 (being Laws 1961,  
19 Chapter 240, Section 4, as amended) is amended to read:

20 "10-9-4. COVERAGE OF SERVICE.--The Personnel Act and the  
21 service cover all state positions except:

22 A. officials elected by popular vote or appointed  
23 to fill vacancies to elective offices;

24 B. members of boards and commissions and heads of  
25 agencies appointed by the governor;

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1 C. heads of agencies appointed by boards or  
2 commissions;

3 D. directors of department divisions;

4 E. those in educational institutions and in public  
5 schools;

6 F. those employed by state institutions and by  
7 state agencies providing educational programs and who are  
8 required to hold valid certificates as certified school  
9 instructors as defined in Section 22-1-2 NMSA 1978 issued by  
10 the public education department;

11 G. those in the governor's office;

12 H. those in the office of the attorney general;

13 ~~[H.]~~ I. those in the state militia or the  
14 commissioned officers of the New Mexico state police division  
15 of the department of public safety;

16 ~~[I.]~~ J. those in the judicial branch of government;

17 ~~[J.]~~ K. those in the public defender department,  
18 upon implementation of personnel policies and rules by the  
19 public defender commission;

20 ~~[K.]~~ L. those in the legislative branch of  
21 government;

22 ~~[L.]~~ M. not more than two assistants and one  
23 secretary in the office of each official listed in Subsections  
24 A, B and C of this section, excluding members of boards and  
25 commissions in Subsection B of this section;

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1           ~~[M.]~~ N. those of a professional or scientific  
2 nature that are temporary in nature;

3           ~~[N.]~~ O. those filled by patients or inmates in  
4 charitable, penal or correctional institutions;

5           ~~[O.]~~ P. state employees if the board in its  
6 discretion decides that the position is one of policymaking;  
7 and

8           ~~[P.]~~ Q. disadvantaged youth under twenty-two years  
9 of age regularly enrolled or to be enrolled in a secondary  
10 educational institution approved by the public education  
11 department or in an accredited state institution of advanced  
12 learning or vocational training and who are to be employed for  
13 not more than seven hundred twenty hours during any calendar  
14 year:

15                       (1) the term "disadvantaged youth" shall be  
16 defined for purposes of this exemption by regulation duly  
17 promulgated by the board; and

18                       (2) the board shall:

19                               (a) require that all the criteria of  
20 this subsection have been met;

21                               (b) establish employment lists for the  
22 certification of the highest-standing candidates to the  
23 prospective employers; and

24                               (c) establish the pay rates for such  
25 employees."

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1           SECTION 2. Section 36-1A-2 NMSA 1978 (being Laws 1991,  
2 Chapter 175, Section 2) is amended to read:

3           "36-1A-2. PURPOSE OF ACT--ENACTMENT UNDER CONSTITUTION.--  
4 The purpose of the District Attorney Personnel and Compensation  
5 Act is to establish for all district attorneys and the office  
6 of the attorney general a uniform, equitable and binding system  
7 of personnel administration. The system shall be based solely  
8 on qualification and ability and will provide for  
9 classifications, compensation, fringe benefits, disciplinary  
10 procedures, appeal rights and other aspects of state  
11 employment. The District Attorney Personnel and Compensation  
12 Act will also provide a system of classification and  
13 compensation of district attorney and attorney general  
14 personnel that is comparable to the personnel system in effect  
15 for other similar state employees. The District Attorney  
16 Personnel and Compensation Act is enacted pursuant to the  
17 provisions of Article 7, Section 2 of the constitution of New  
18 Mexico."

19           SECTION 3. Section 36-1A-3 NMSA 1978 (being Laws 1991,  
20 Chapter 175, Section 3) is amended to read:

21           "36-1A-3. DEFINITIONS.--As used in the District Attorney  
22 Personnel and Compensation Act:

23           A. "appeal" means a formal request for a full  
24 hearing before the board or authorized hearing officer to  
25 review a disciplinary action solely involving suspension,

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1 demotion or termination of a covered employee in a district  
2 attorney's office or the office of the attorney general;

3 B. "board" means the district attorney personnel  
4 review board;

5 C. "class specification" means a written statement  
6 of the duties and responsibilities characteristic of a class of  
7 positions and includes the class title, supervision exercised  
8 and received, guidelines available, examples of work performed,  
9 working conditions and minimum qualifications or substitutions  
10 thereof that specify education, training, health, experience,  
11 knowledge, abilities and skills required for a position;

12 D. "classification series" means a group of class  
13 specifications or employment positions similar enough in powers  
14 and responsibilities that they can be covered by similar  
15 qualifications and titles. A classification series may consist  
16 of many levels, starting with the entry level position and  
17 advancing upward in duties, complexity, authority and  
18 responsibility;

19 E. "compensation plan" means a plan that  
20 establishes for each class in the plan a salary range that  
21 consists of at least minimum and maximum salaries, as  
22 authorized by the legislature;

23 F. "covered employee" means a person in a full-time  
24 or part-time covered position who has successfully completed  
25 the probationary period and is covered by all provisions of the

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1 District Attorney Personnel and Compensation Act;

2 G. "covered position" means any position within a  
3 district attorney's office or the office of the attorney  
4 general except the positions of district attorney, attorney,  
5 district office manager, public information officer, chief  
6 financial officer, chief administrative officer, chief  
7 information officer, human resources manager and special  
8 program director;

9 H. "disciplinary action" means a suspension,  
10 demotion or dismissal of a covered employee;

11 I. "district attorneys" means the [~~present~~] current  
12 fourteen duly elected district attorneys, or a substitute  
13 appointee for one of them, plus any additional elected district  
14 attorneys or future appointees created after the effective date  
15 of the District Attorney Personnel and Compensation Act;

16 J. "employee" means a person in a full-time or  
17 part-time position in a district attorney's office or the  
18 office of the attorney general, but shall not be construed to  
19 include district attorneys or the attorney general;

20 K. "performance evaluation" means the written  
21 appraisal of an employee's performance of assigned duties;

22 L. "position" means any position in a district  
23 attorney's office or the office of the attorney general; and

24 M. "probationary employee" means a person who is  
25 appointed to a covered position but who has not yet completed

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1 the probationary period."

2 SECTION 4. Section 36-1A-4 NMSA 1978 (being Laws 1991,  
3 Chapter 175, Section 4) is amended to read:

4 "36-1A-4. COVERAGE OF SERVICE--EXEMPTIONS.--

5 A. The District Attorney Personnel and Compensation  
6 Act shall cover all employees, except only covered employees  
7 shall be entitled to utilize grievance procedures and the  
8 appeals provisions in Section [~~9 of the District Attorney~~  
9 ~~Personnel and Compensation Act~~] 36-1A-9 NMSA 1978.

10 B. The positions of attorney, district office  
11 manager, public information officer, chief financial officer,  
12 chief administrative officer, chief information officer, human  
13 resources manager and special program director are "at will"  
14 positions that serve at the pleasure of the district attorney  
15 or the attorney general."

16 SECTION 5. Section 36-1A-5 NMSA 1978 (being Laws 1991,  
17 Chapter 175, Section 5) is amended to read:

18 "36-1A-5. PERSONNEL BOARD--APPOINTMENT.--There is created  
19 the "district attorney personnel review board". The board  
20 shall consist of five district attorneys [~~including~~] and the  
21 attorney general. District attorneys and the attorney general  
22 shall annually elect a president, vice president, secretary-  
23 treasurer and [~~two~~] three voting members [~~all elected annually~~  
24 ~~by the district attorneys~~]."

25 SECTION 6. Section 36-1A-7 NMSA 1978 (being Laws 1991,

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1 Chapter 175, Section 7) is amended to read:

2 "36-1A-7. BOARD--DUTIES.--The board shall:

3 A. recommend to the district attorneys  
4 ~~[regulations]~~ and the attorney general rules necessary or  
5 appropriate to implement and administer the District Attorney  
6 Personnel and Compensation Act;

7 B. determine the qualifications for each class  
8 specification or classification series, including required  
9 levels of education, experience, special skills and legal  
10 knowledge;

11 C. prepare class specifications to be performed in  
12 each class of positions;

13 D. recommend a compensation plan of pay ranges to  
14 which class specifications and classification series are  
15 assigned, subject to legislative appropriations;

16 E. hear appeals solely involving suspension,  
17 demotion or termination of a covered employee, and render its  
18 final decision, unless the covered employee elects under  
19 Section ~~[9 of the District Attorney Personnel and Compensation~~  
20 ~~Act]~~ 36-1A-9 NMSA 1978 to have the appeal heard by a state-  
21 personnel-office-designated hearing officer;

22 F. make periodic reviews of the personnel  
23 regulations, classification plan and compensation ranges that  
24 govern employees to ensure that all federal action, legislative  
25 mandates and other substantive changes are incorporated into

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1 the [~~regulations~~] rules in a timely fashion and make  
2 recommendations thereon to the district attorneys and the  
3 attorney general;

4 G. recommend to the district attorneys and to the  
5 attorney general to contract for services of consultants  
6 necessary to perform a compensation or classification plan of  
7 all district attorney and attorney general positions, subject  
8 to legislative appropriation; and

9 H. consider other personnel matters as designated  
10 by the district attorneys and the attorney general."

11 SECTION 7. Section 36-1A-8 NMSA 1978 (being Laws 1991,  
12 Chapter 175, Section 8) is amended to read:

13 "36-1A-8. RULES--ADOPTION--COVERAGE.--

14 A. Personnel rules shall be promulgated by the  
15 district attorneys and the attorney general and shall be  
16 effective when filed as required by law.

17 B. The personnel rules of the district attorneys  
18 and the attorney general shall include provisions governing:

- 19 (1) a classification plan for all positions;  
20 (2) a compensation plan for all positions;  
21 (3) a reasonable period of probation during  
22 which a probationary employee may be discharged, demoted or  
23 transferred without benefit of hearing;  
24 (4) hours of work requirements and holiday,  
25 overtime and leave policies;

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1 (5) the evaluation of performance of employees  
2 for the purpose of improving staff effectiveness;

3 (6) any reduction in force needed due to lack  
4 of funds or work, abolition of a position, material change in  
5 duties or reorganization;

6 (7) promotions or transfers, which shall give  
7 appropriate consideration to the applicant's qualifications,  
8 skills, job performance and duties;

9 (8) a disciplinary procedure, which shall  
10 provide for an equitable response to infractions of rules or  
11 work performance standards; and

12 (9) an appeal process to review a disciplinary  
13 action solely involving suspension, demotion or termination."

14 SECTION 8. Section 36-1A-11 NMSA 1978 (being Laws 1991,  
15 Chapter 175, Section 11) is amended to read:

16 "36-1A-11. DISTRICT ATTORNEYS AND ATTORNEY GENERAL TO  
17 ESTABLISH A COMPENSATION PLAN COVERAGE.--

18 A. The district attorneys and the attorney general  
19 shall establish a compensation plan for all employees of  
20 district attorneys or the attorney general. Before being  
21 implemented, the compensation plan shall be reviewed by the  
22 legislative finance committee and approved by the department of  
23 finance and administration. The compensation plan shall  
24 substantially conform to the compensation plan and  
25 classification series in effect for all other state employees.

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1 In addition, the plan shall include class specifications and  
2 requirements for performance evaluation.

3 B. The compensation plan provided by this section  
4 and adopted by the district attorneys and the attorney general  
5 shall apply to all employees."

6 SECTION 9. Section 36-1A-12 NMSA 1978 (being Laws 1991,  
7 Chapter 175, Section 12) is amended to read:

8 "36-1A-12. ADDITIONAL DUTIES OF DISTRICT ATTORNEYS AND  
9 THE OFFICE OF THE ATTORNEY GENERAL.--The district attorneys as  
10 a group and the attorney general shall:

11 A. adopt and promulgate [~~regulations~~] rules to  
12 effectuate the provisions of the compensation plan for all  
13 employees;

14 B. conduct periodic reviews of the [~~regulations~~]  
15 rules, classification series and compensation ranges to ensure  
16 that applicable federal action, legislative mandates and other  
17 substantive changes are incorporated in the compensation plan  
18 in a timely fashion;

19 C. contract for consultant services to reevaluate  
20 the classification and compensation plans to ensure their  
21 compatibility, subject to legislative appropriation, with  
22 classes covered by the Personnel Act and the judicial pay plan;  
23 and

24 D. prepare an annual fiscal report and specify  
25 proposed changes, if any, to the compensation plan prior to

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1 each regular legislative session. Before any proposed changes  
2 are implemented, they shall be reviewed by the legislative  
3 finance committee and approved by the department of finance and  
4 administration."

5 SECTION 10. Section 36-1A-15 NMSA 1978 (being Laws 1991,  
6 Chapter 175, Section 15) is amended to read:

7 "36-1A-15. FEDERAL FUNDS AND ASSISTANCE.--When the  
8 provisions of any laws of the United States or any rule, order  
9 or regulation of any federal agency or authority providing  
10 federal funds for use in the state, either directly or  
11 indirectly or as a grant-in-aid, to be matched or otherwise,  
12 impose as a condition for the receipt of such funds other or  
13 higher personnel standards or different classifications than  
14 are provided for by the District Attorney Personnel and  
15 Compensation Act, the board shall recommend to the district  
16 attorneys and the attorney general adoption of rules [~~and~~  
17 ~~regulations~~] to meet the requirements of such laws, rules,  
18 order or regulation."