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SENATE BILL 288

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

INTRODUCED BY

Linda M. Lopez

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:

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

A. "agency" means the state, political subdivisions

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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 [~~and~~]

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 [~~E.~~] 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 RESOLUTION-- AUTHORIZATION--  
21 PROCEDURES-- AGENCY COORDINATORS. --

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  
25 or functions, including formal and informal adjudications,

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

7 B. An agency that chooses to use [~~an~~] alternative  
8 dispute resolution [~~process~~] shall develop an agreement with  
9 interested parties that:

10 (1) provides for the appointment of neutrals,  
11 consultants or experts agreed upon by all parties and serving  
12 at the will of all parties. A neutral, consultant or expert  
13 shall have no official, financial or personal conflict of  
14 interest with any issue or party in controversy unless the  
15 conflict of interest is fully disclosed in writing to all of  
16 the parties and all parties agree that the person may continue  
17 to serve;

18 (2) specifies any limitation periods  
19 applicable to the commencement or conclusion of formal  
20 administrative or judicial proceedings and, if applicable,  
21 specifies any time periods that the parties have agreed to  
22 waive;

23 (3) establishes rules for the alternative  
24 dispute resolution procedures; and

25 (4) sets forth how costs and expenses shall be

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1 equitably apportioned among the parties.

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

6 D. The administrative head of an agency ~~may~~ that  
7 has more than twenty-five full-time employees shall designate  
8 an employee as the alternative dispute resolution coordinator  
9 for that agency. The coordinator shall:

10 (1) ~~make recommendations~~ to the agency's  
11 executive staff on issues and disputes that are suitable for  
12 alternative dispute resolution;

13 (2) analyze the agency's enabling statutes and  
14 rules to determine whether they contain impediments to the use  
15 of alternative dispute resolution ~~procedures~~ and suggest any  
16 modifications;

17 (3) monitor the agency's use of alternative  
18 dispute resolution ~~procedures~~;

19 (4) arrange for the training of agency staff  
20 in alternative dispute resolution procedures; ~~and~~

21 (5) provide information about the agency's  
22 alternative dispute resolution procedures to the agency's staff  
23 and to the public;

24 (6) coordinate the agency's alternative  
25 dispute resolution program

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

3 (3) when requested, assist agencies in  
4 streamlining licensing, permitting and credentialing functions;

5 (4) provide research and fact-finding services  
6 and resources for the coordination and resolution of issues  
7 involving one or more agencies;

8 (5) provide training for agency staff in  
9 alternative dispute resolution and collaborative process  
10 techniques and procedures; and

11 (6) assist local governments with community  
12 issues when requested.

13 C. The office may enter into joint powers  
14 agreements with agencies to provide services on individual  
15 issues or continuing services on a variety of subjects and  
16 issues, and the office may contract with individuals and  
17 entities to carry out the purposes of the Governmental Dispute  
18 Resolution Act.

19 D. The office may accept federal, local and private  
20 grants and bequests, donations, gifts and contributions for the  
21 purposes of the Governmental Dispute Resolution Act.

22 E. The office shall adopt rules necessary to carry  
23 out the provisions of the Governmental Dispute Resolution Act."

24 Section 5. A new section of the Governmental Dispute  
25 Resolution Act, Section 12-8A-7 NMSA 1978, is enacted to read:

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