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SENATE BILL 479

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Cisco McSorley

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.--~~[This act]~~ 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:

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1 "12-8A-2. DEFINITIONS.--As used in the Governmental
2 Dispute Prevention and Resolution Act:

3 A. "agency" means the state [~~political subdivisions~~
4 ~~of the state and any of their branches~~] and its agencies,
5 departments, boards, instrumentalities or institutions that are
6 insured by the division;

7 B. "alternative dispute resolution" means a process
8 other than litigation used to prevent or resolve disputes,
9 including mediation, facilitation, regulatory negotiation,
10 settlement conferences, binding and nonbinding arbitration,
11 fact-finding, conciliation, early neutral evaluation and policy
12 dialogues; [and]

13 C. "council" means the alternative dispute
14 prevention and resolution advisory council;

15 D. "department" means the general services
16 department;

17 E. "division" means the risk management division of
18 the department;

19 F. "interested party" means a person having or
20 anticipating a dispute with any agency, or a representative of
21 that person;

22 [~~G.~~] G. "neutral party" means a person who
23 [~~provides~~] is trained to provide services as a mediator,
24 arbitrator, facilitator, fact-finder or conciliator [~~or~~] who
25 [~~otherwise~~] aids parties to prevent or resolve disputes;

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1 H. "office" means the bureau known as the office of
2 alternative dispute prevention and resolution in the division;
3 and

4 I. "public facilitation" means collaboration with
5 identified stakeholders concerning public policy issues,
6 including policy dialogues and other techniques to seek
7 consensus, reconcile differences or prevent disputes from
8 arising in the development or implementation of public
9 administration issues."

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

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

14 A. An agency [~~may use an~~] shall provide interested
15 parties with access to alternative dispute resolution
16 [~~procedure~~] procedures to prevent or resolve any dispute, issue
17 or controversy involving any of the agency's operations,
18 policies, programs or functions, including formal and informal
19 adjudications, rulemakings, enforcement actions, permitting,
20 certifications, licensing, policy development and contract
21 administration. Alternative dispute resolution procedures are
22 voluntary and may be [~~used at the discretion of the agency or~~]
23 initiated at the request of the agency or an interested party
24 to a dispute.

25 B. An agency that [~~chooses to use an~~] participates

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1 in alternative dispute resolution [~~process~~] shall develop [~~an~~
2 ~~agreement with~~] a written agreement to be signed by interested
3 parties that:

4 (1) provides for the appointment of [~~neutrals~~]
5 neutral parties, consultants or experts agreed upon by all
6 parties and serving at the will of all parties. A neutral
7 party, consultant or expert shall have no official, financial
8 or personal conflict of interest with any issue or party in
9 controversy unless the conflict of interest is fully disclosed
10 in writing to all of the parties and all parties agree that the
11 person may continue to serve;

12 (2) specifies any limitation periods
13 applicable to the commencement or conclusion of formal
14 administrative or judicial proceedings and, if applicable,
15 specifies any time periods that the parties have agreed to
16 waive;

17 (3) [~~establishes rules for the~~] contains
18 provisions for alternative dispute resolution [~~procedures~~] that
19 conform with rules promulgated by the division; and

20 (4) sets forth how costs and expenses of the
21 procedure chosen shall be equitably apportioned among the
22 parties.

23 C. An agreement, developed pursuant to Subsection B
24 of this section, may be included in an enforcement order,
25 stipulation, contract, permit or other document entered into or

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1 issued by the agency.

2 D. The administrative head of an agency may
3 designate an employee as the alternative dispute resolution
4 coordinator for that agency. The coordinator shall:

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

8 (2) analyze the agency's enabling statutes and
9 rules to determine whether they contain impediments to the use
10 of alternative dispute resolution [~~procedures~~] or
11 inconsistencies with rules promulgated by the office and
12 suggest any modifications;

13 (3) monitor the agency's use of alternative
14 dispute resolution [~~procedures~~];

15 (4) arrange for training of agency staff in
16 alternative dispute resolution [~~procedures; and~~];

17 (5) respond to inquiries from the office or
18 council concerning the agency's use of alternative dispute
19 resolution;

20 (6) make recommendations to the office and
21 council concerning development and implementation of rules,
22 standards and educational materials;

23 (7) serve as the agency's liaison with the
24 office and the council; and

25 [~~+5~~] (8) provide information about the

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1 office's rules and the agency's alternative dispute resolution
2 procedures to the agency's staff and to the public."

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

5 "12-8A-4. AGENCY BUDGETS--CONTRACTS FOR SERVICES.--

6 A. An agency [~~may~~] shall take fiscal actions
7 necessary to achieve the objectives of the Governmental Dispute
8 Prevention and Resolution Act and pay for costs incurred in
9 taking those actions, including reasonable fees for training,
10 policy review, system design, evaluation and the use of
11 impartial third parties. Unless specifically prohibited by
12 law, an agency may request category transfers pursuant to
13 Sections 6-3-23 through 6-3-25 NMSA 1978 for the purpose of
14 paying the necessary costs incurred in meeting the objectives
15 of the Governmental Dispute Prevention and Resolution Act.

16 B. An agency may contract with another agency or
17 with a private entity for any service necessary to meet the
18 objectives of the Governmental Dispute Prevention and
19 Resolution Act."

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

22 "12-8A-5. EFFECT ON OTHER LAWS.--Nothing in the
23 Governmental Dispute Prevention and Resolution Act and rules,
24 agreements and procedures developed pursuant to that act:

25 A. limits other dispute prevention or resolution

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1 procedures available to an agency;

2 B. denies a person a right granted under federal or
3 other state law, including a right to an administrative or
4 judicial hearing;

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

7 D. waives immunity granted under the eleventh
8 amendment to the constitution of the United States;

9 E. authorizes or prohibits binding arbitration as a
10 method of alternative dispute resolution when mutually agreed
11 to in writing by the interested parties;

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

14 G. authorizes or requires any meeting, otherwise
15 required to be open to the public, to be closed; [~~or~~]

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

18 I. shall be interpreted to create an additional
19 layer of administrative process or to discourage or impede the
20 use of alternative dispute resolution."

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

23 "[NEW MATERIAL] ALTERNATIVE DISPUTE PREVENTION AND
24 RESOLUTION ADVISORY COUNCIL CREATED.--

25 A. The "alternative dispute prevention and

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1 resolution advisory council" is created in the division. The
2 council consists of nine voting members as follows:

- 3 (1) the secretary of general services;
- 4 (2) the secretary of finance and
5 administration;
- 6 (3) the director of the state personnel
7 office;
- 8 (4) the superintendent of regulation and
9 licensing;
- 10 (5) the cabinet secretary or agency head of
11 four other executive branch agencies to be appointed by the
12 governor from among the ten agencies with the highest
13 occurrence of public liability claims per authorized number of
14 staff, no more than two of whom are cabinet secretaries; and
15 (6) the director of the division, who shall
16 serve as chair of the council.

17 B. An agency head may designate a representative to
18 serve on the council.

19 C. The council shall meet at least twice each
20 year."

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

23 "[NEW MATERIAL] ALTERNATIVE DISPUTE PREVENTION AND
24 RESOLUTION ADVISORY COUNCIL--DUTIES.--The council shall:

25 A. review information about the use of alternative

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1 dispute resolution, including referrals, and make
2 recommendations to the office to improve the effectiveness of
3 alternative dispute resolution programs;

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

6 C. recommend to the division appropriate training
7 standards and schedules for neutral parties and agency managers
8 and supervisors;

9 D. review and recommend standards and rules to the
10 division to foster participation in alternative dispute
11 resolution and minimize conflict in the discussion of issues
12 under consideration by interested parties; and

13 E. present an annual report to the department, the
14 governor and the legislature by December 1 of each year on the
15 use, cost and success of alternative dispute resolution
16 programs."

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

19 "[NEW MATERIAL] OFFICE OF ALTERNATIVE DISPUTE PREVENTION
20 AND RESOLUTION--CREATED--POWERS--DUTIES.--

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

23 B. In order to promote alternative dispute
24 resolution, the office shall:

25 (1) organize and manage alternative dispute

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1 resolution programs for agencies, employees, vendors,
2 businesses regulated by governmental entities and other
3 interested parties;

4 (2) coordinate the use of neutral parties to
5 facilitate alternative dispute resolution for interested
6 parties and training for agency staff;

7 (3) implement development and use of
8 alternative dispute resolution strategies;

9 (4) provide staff support for the council;

10 (5) maintain information and educate
11 government officials about training and use of alternative
12 dispute resolution and referrals; and

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

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

25 Section 10. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2007.

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