

1 SENATE BILL 274

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Linda M. Lopez

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10 AN ACT

11 RELATING TO INSURANCE; AMENDING A SECTION OF THE WORKERS'  
12 COMPENSATION ACT TO PROVIDE FOR QUALIFICATION OF APPOINTMENT OF  
13 WORKERS' COMPENSATION JUDGES AND FOR PROCESSING OF COMPLAINTS  
14 AGAINST THEM.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 52-5-2 NMSA 1978 (being Laws 1986,  
18 Chapter 22, Section 28, as amended) is amended to read:

19 "52-5-2. DIRECTOR--APPOINTMENT--EMPLOYEEES--WORKERS'  
20 COMPENSATION JUDGES.--

21 A. The workers' compensation administration shall  
22 be in the charge of a director, who shall be appointed by the  
23 governor for a term of five years with the consent of the  
24 senate. The appointed director shall serve and have the  
25 authority of that office during the period of time prior to

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1 final action by the senate confirming or rejecting the  
2 appointment. The appointment shall be made on the basis of  
3 administrative ability, education, training and experience  
4 relevant to the duties of the director. Upon the expiration of  
5 the term, the director shall continue to serve until the  
6 successor is appointed and qualified. Before entering upon the  
7 duties, the director shall subscribe to an oath to faithfully  
8 discharge the duties of the office. The director shall devote  
9 full time to the duties of the office.

10 B. ~~[The director shall appoint necessary workers'~~  
11 ~~compensation judges.]~~ Workers' compensation judges shall not be  
12 subject to the provisions of the Personnel Act. ~~[except as~~  
13 ~~provided by Subsection C of this section. Workers'~~  
14 ~~compensation judges shall be appointed for an initial term of~~  
15 ~~one year and shall be compensated at a rate equal to ninety~~  
16 ~~percent of that of district court judges. Ninety days prior to~~  
17 ~~the expiration of a workers' compensation judge's term, the~~  
18 ~~director shall review his performance. If approved by the~~  
19 ~~director, the workers' compensation judge may be reappointed to~~  
20 ~~a subsequent five-year term.~~

21 G. ~~Workers' compensation judges shall be lawyers~~  
22 ~~licensed to practice law in this state and shall have a minimum~~  
23 ~~five years' experience as a practicing lawyer. They]~~

24 C. Workers' compensation judges shall be at least  
25 thirty-five years of age and in the actual practice of law for

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1 at least six years and a New Mexico resident for at least three  
2 years. The director shall appoint necessary workers'  
3 compensation judges in accordance with the following  
4 procedures:

5 (1) upon the occurrence of a judicial vacancy  
6 in the workers' compensation administration, the director shall  
7 notify the dean of the university of New Mexico school of law  
8 and the workers' compensation administration. The director  
9 shall publish a notice of the vacancy in the bar bulletin. The  
10 notice shall state that applications will be taken from all  
11 qualified applicants for a period of thirty days. The dean  
12 shall also form a nominating committee consisting of up to  
13 eight members selected as follows:

14 (a) four nonattorney members, two from  
15 business and two from labor selected by the advisory council on  
16 workers' compensation upon recommendation of the business and  
17 labor coalition of New Mexico;

18 (b) one attorney appointed by the New  
19 Mexico trial lawyers association and foundation who has  
20 practiced workers' compensation law for five years, who devotes  
21 at least one-half of the attorney's practice to workers'  
22 compensation matters and who generally represents employees in  
23 workers' compensation matters;

24 (c) one attorney appointed by the New  
25 Mexico defense lawyers association who has practiced workers'

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1 compensation law for five years, who devotes at least one-half  
2 of the attorney's practice to workers' compensation matters and  
3 who generally represents employers in workers' compensation  
4 matters;

5 (d) one member appointed at large by the  
6 state bar of New Mexico; and

7 (e) the dean of the university of New  
8 Mexico school of law or the dean's designee, who shall be chair  
9 of the committee but who shall vote only in the event of a tie  
10 among the other members;

11 (2) the dean shall appoint committee members,  
12 in the dean's discretion, if selections are not timely,  
13 pursuant to this section;

14 (3) the committee shall interview all  
15 qualified potential candidates and shall submit a list of  
16 recommended candidates that the committee deems qualified to  
17 the director. The director shall make an appointment from the  
18 list within thirty days. Should the director fail to make an  
19 appointment within thirty days, the chief judge of the workers'  
20 compensation administration shall make such appointment from  
21 the list provided by the committee; and

22 (4) appointments shall be for three-year  
23 terms.

24 D. The workers' compensation judges shall elect a  
25 chief judge who shall serve a term of three years. If the

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1 judges fail to elect a chief judge, the director shall appoint  
2 a chief judge. A chief judge, so elected or appointed, may  
3 stand for reelection at the expiration of the chief judge's  
4 term. The chief judge shall be responsible for the oversight  
5 of fellow judges and shall provide direction and counsel to  
6 fellow judges to improve the court decorum and the  
7 administration of justice at the workers' compensation  
8 administration. In the execution of duties, the chief judge  
9 shall take all appropriate action to ensure finalization of  
10 cases that have been under advisement for more than thirty  
11 days, including reassignment of cases or appointment of another  
12 judge or pro tempore to render a decision.

13 E. The salaries and retirement benefits of workers'  
14 compensation judges shall be ninety percent of those received  
15 by district court judges.

16 F. No later than the middle of each term, the  
17 director shall evaluate the performance of each workers'  
18 compensation judge substantially in accordance with the  
19 following procedures:

20 (1) a confidential evaluation questionnaire  
21 shall be submitted by the director to the following persons:

22 (a) attorneys practicing regularly  
23 before the workers' compensation administration;

24 (b) two members of the advisory council  
25 on workers' compensation;

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1                   (c) two members of the business and  
2 labor coalition of New Mexico; and

3                   (d) parties appearing before the  
4 workers' compensation administration;

5                   (2) the evaluation questionnaire shall contain  
6 an evaluation of the judge in the following categories:

7                   (a) knowledge of workers' compensation  
8 law;

9                   (b) timeliness of decisions;

10                  (c) legal reasoning;

11                  (d) demeanor; and

12                  (e) communication skills; and

13                  (3) the evaluation shall be made based on a  
14 five-point scale, five being the highest and zero being the  
15 lowest. The completed evaluations shall be strictly  
16 confidential and shall not be disclosed to the public, the  
17 judge or other members of the administration.

18                  G. No later than six months prior to the end of  
19 each term, the New Mexico judicial performance evaluation  
20 commission shall evaluate the performance of each workers'  
21 compensation judge to determine whether the workers'  
22 compensation judge should be recommended for reappointment.  
23 The commission shall evaluate each workers' compensation judge  
24 substantially in accordance with the procedures set forth in  
25 Subsection F of this section. A compilation and report of the

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1 results shall be prepared by the commission and submitted to  
2 the director. The report shall include a recommendation by the  
3 commission as to whether the workers' compensation judge should  
4 be reappointed. The director shall act in accordance with the  
5 recommendation of the commission. The report, including the  
6 commission's recommendation, shall be released to the public.

7 H. Workers' compensation judges shall devote their  
8 entire time to their duties and shall not engage in the private  
9 practice of law and shall not hold any other position of trust  
10 or profit or engage in any occupation or business interfering  
11 with or inconsistent with the discharge of their duties as  
12 workers' compensation judges. A workers' compensation judge  
13 shall be required to conform to all canons of the code of  
14 judicial conduct as adopted by the supreme court [~~except canon~~  
15 ~~21-900 of that code. Violation of those canons shall be~~  
16 ~~exclusive grounds for dismissal prior to the expiration of his~~  
17 ~~term]. Any complaints against a workers' compensation judge~~  
18 ~~shall be filed with the [state personnel board, which shall~~  
19 ~~report its findings to the director] New Mexico judicial~~  
20 standards commission. Workers' compensation judges shall be  
21 subject to the superintending control of the supreme court.

22 [~~D.~~] I. Workers' compensation judges shall have the  
23 same immunity from liability for their adjudicatory actions as  
24 district court judges."