

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 396

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

INTRODUCED BY

Nate Gentry

AN ACT

RELATING TO JUDICIAL REVIEW; CREATING ADDITIONAL STANDARDS FOR
SCOPE OF REVIEW FOR APPEALS OF AGENCY DECISIONS TO DISTRICT
COURT.

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

SECTION 1. A new section of the State Rules Act is
enacted to read:

"[NEW MATERIAL] JUDICIAL REVIEW.--A rule or proposed rule
shall be subject to judicial review pursuant to Section
39-3-1.1 NMSA 1978."

SECTION 2. Section 39-3-1.1 NMSA 1978 (being Laws 1998,
Chapter 55, Section 1, as amended) is amended to read:

"39-3-1.1. APPEAL OF FINAL ~~[DECISIONS]~~ AGENCY ACTIONS BY
AGENCIES TO DISTRICT COURT--APPLICATION--SCOPE OF REVIEW--
REVIEW OF DISTRICT COURT DECISIONS.--

.184013.4

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 A. The provisions of this section shall apply
2 ~~[only]~~ to judicial review of ~~[agency final decisions that are~~
3 ~~placed under the authority of this section by specific~~
4 ~~statutory reference]~~ a final agency action.

5 B. Upon issuing a final ~~[decision]~~ agency action,
6 an agency shall promptly:

7 (1) prepare a written decision that includes
8 an order granting or denying relief and a statement of the
9 factual and legal basis for the order;

10 (2) file the written decision with the
11 official public records of the agency; and

12 (3) serve a document that includes a copy of
13 the written decision and the requirements for filing an appeal
14 of the final ~~[decision]~~ agency action on:

15 (a) all persons who were parties in the
16 proceeding before the agency; and

17 (b) every person who has filed a written
18 request for notice of the final ~~[decision]~~ agency action in
19 that particular proceeding.

20 ~~[G. Unless standing is further limited by a~~
21 ~~specific statute, a person aggrieved by a final decision may~~
22 ~~appeal the decision to district court by filing in district~~
23 ~~court a notice of appeal within thirty days of the date of~~
24 ~~filing of the final decision.]~~

25 C. A person has standing to obtain judicial review

underscored material = new
[bracketed material] = delete

1 of a final agency action if that person:

2 (1) is aggrieved or adversely affected by the
3 final agency action;

4 (2) is likely to be aggrieved or adversely
5 affected if postponement of judicial review would result in an
6 inadequate remedy or irreparable harm that outweighs the public
7 benefit derived from postponing judicial review; or

8 (3) has standing as otherwise provided by law.

9 D. The appeal may be taken to the district court
10 for the county in which the agency maintains its principal
11 office or the district court of any county in which a hearing
12 on the matter was conducted. When notices of appeal from a
13 final [~~decision~~] agency action are filed in more than one
14 district court, all appeals not filed in the district court in
15 which the first appeal was properly filed shall be dismissed
16 without prejudice. An appellant whose appeal was dismissed
17 without prejudice pursuant to the provisions of this subsection
18 shall have fifteen days after receiving service of the notice
19 of dismissal to file a notice of appeal in the district court
20 in which the first appeal was properly filed.

21 E. A person aggrieved by a final agency action may
22 appeal the action to district court by filing in district court
23 a notice of appeal:

24 (1) within one year of the date of
25 promulgation or the effective date of the rule if filing for

.184013.4

underscored material = new
[bracketed material] = delete

1 review of a rule; or

2 (2) within thirty days of the date the parties
3 are notified of the final agency action, for actions other than
4 review of a rule.

5 ~~[D.]~~ F. In a proceeding for judicial review of a
6 final ~~[decision by an]~~ agency action, the district court may
7 stay, set aside, reverse or remand the final ~~[decision]~~ agency
8 action if it determines that:

9 ~~[(1) the agency acted fraudulently,~~
10 ~~arbitrarily or capriciously;~~

11 ~~(2) the final decision was not supported by~~
12 ~~substantial evidence; or~~

13 ~~(3) the agency did not act in accordance with~~
14 ~~law]~~

15 (1) the agency interpreted the law
16 erroneously;

17 (2) the agency lacked the statutory authority
18 for the final agency action;

19 (3) the agency committed an error of
20 procedure;

21 (4) the agency action is arbitrary,
22 capricious, an abuse of discretion or otherwise not in
23 accordance with law;

24 (5) an agency determination of fact in an
25 agency final action is not supported by substantial evidence in

.184013.4

underscored material = new
[bracketed material] = delete

1 the record; or

2 (6) to the extent that the facts are subject
3 to a trial de novo by the reviewing court, the action was
4 unwarranted by the facts.

5 G. In making a determination pursuant to Subsection
6 F of this section, the district court shall review the relevant
7 agency record. The burden of demonstrating the invalidity of a
8 final agency action is on the party asserting invalidity.

9 H. A petition for review does not automatically
10 stay a final agency action. A challenging party may request
11 the reviewing court for a stay, which may be granted at the
12 discretion of the court on grounds that include the:

13 (1) likelihood that the requesting party will
14 prevail on the merits of appeal;

15 (2) irreparable harm to a party unless the
16 stay is granted;

17 (3) substantial harm to other interested
18 persons; or

19 (4) harm to public interest.

20 [~~E.~~] I. A party to the appeal to district court may
21 seek review of the district court decision by filing a petition
22 for writ of certiorari with the court of appeals, which may
23 exercise its discretion whether to grant review. A party may
24 seek further review by filing a petition for writ of certiorari
25 with the supreme court.

.184013.4

underscored material = new
[bracketed material] = delete

1 ~~[F.]~~ J. The district court may certify to the court
2 of appeals a final ~~[decision]~~ agency action appealed to the
3 district court, but undecided by that court, if the appeal
4 involves an issue of substantial public interest that should be
5 decided by the court of appeals. The appeal shall then be
6 decided by the court of appeals.

7 ~~[G.]~~ K. The procedures governing appeals and
8 petitions for writ of certiorari that may be filed pursuant to
9 the provisions of this section shall be set forth in rules
10 adopted by the supreme court.

11 ~~[H.]~~ L. As used in this section:

12 (1) "agency" means any ~~[state or local public~~
13 ~~body or officer placed under the authority of this section by~~
14 ~~specific statutory reference]~~ agency, board, commission,
15 department, institution or officer of the state government
16 except the judicial and legislative branches of the state
17 government;

18 ~~[(2) "final decision" means an agency ruling~~
19 ~~that as a practical matter resolves all issues arising from a~~
20 ~~dispute within the jurisdiction of the agency, once all~~
21 ~~administrative remedies available within the agency have been~~
22 ~~exhausted. The determination of whether there is a final~~
23 ~~decision by an agency shall be governed by the law regarding~~
24 ~~the finality of decisions by district courts. "Final decision"~~
25 ~~does not mean a decision by an agency on a rule, as defined in~~

