

SENATE RULES COMMITTEE SUBSTITUTE FOR
SENATE BILLS 67 & 104

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

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; ENACTING THE ADMINISTRATIVE
HEARINGS ACT; CREATING THE ADMINISTRATIVE HEARINGS OFFICE;
PROVIDING POWERS AND DUTIES; PRESCRIBING QUALIFICATIONS FOR THE
CHIEF HEARING OFFICER AND HEARING OFFICERS; CONSOLIDATING
HEARING OFFICERS FROM ALL DEPARTMENTS AND OTHER STATE AGENCIES;
PROVIDING FOR THE TRANSFER OF FUNCTIONS, PERSONNEL, MONEY,
APPROPRIATIONS, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY
REFERENCES.

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

SECTION 1. SHORT TITLE.--This act may be cited as the
"Administrative Hearings Act".

SECTION 2. PURPOSE.--The purpose of the Administrative
Hearings Act is to consolidate under one administrative
hearings office the hearing officers and hearing functions of

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1 all executive state agencies.

2 SECTION 3. DEFINITIONS.--As used in the Administrative
3 Hearings Act:

4 A. "agency" means any agency, board, commission,
5 department, institution or officer of the state government
6 except the judicial and legislative branches of the state
7 government and the public regulation commission;

8 B. "chief" means the chief hearing officer; and

9 C. "office" means the administrative hearings
10 office.

11 SECTION 4. ADMINISTRATIVE HEARINGS OFFICE--CREATED--
12 ADMINISTRATIVE ATTACHMENT--CHIEF AND HEARING OFFICERS--
13 APPOINTMENT--QUALIFICATIONS--OATH OF OFFICE--FULL-TIME
14 EMPLOYMENT.--

15 A. The "administrative hearings office" is created
16 and is administratively attached to the general services
17 department.

18 B. The head of the office is the "chief hearing
19 officer". By August 1, 2011, the governor shall appoint an
20 interim chief from among current hearing officers who are
21 licensed to practice law in New Mexico. Beginning July 1, 2012
22 and thereafter, the chief shall be appointed by the governor,
23 with the advice and consent of the senate, for a four-year
24 term. A chief may serve more than one term with the advice and
25 consent of the senate.

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1 C. The chief may be removed only for malfeasance,
 2 misfeasance or neglect of duty. If a vacancy occurs in the
 3 position of chief, it shall be filled by appointment by the
 4 governor for the remainder of the unexpired term.

5 D. Except for the interim chief, at the time of
 6 appointment, the chief shall have been admitted to practice law
 7 in New Mexico for at least twelve years, with at least ten
 8 years' experience in administrative law.

9 E. Hearing officers are subject to the provisions
 10 of the Personnel Act. At the time of employment, a hearing
 11 officer shall have been admitted to practice law in New Mexico
 12 for at least five years, with at least three years' experience
 13 in administrative law.

14 F. The chief and other hearing officers shall:

15 (1) take the oath of office required by the
 16 constitution of New Mexico. Once a code of conduct is adopted,
 17 the chief and all other hearing officers shall sign the code of
 18 conduct and file it with the office. The code of conduct shall
 19 be reviewed and signed annually; and

20 (2) devote themselves full time to the duties
 21 of the office and shall not engage in the private practice of
 22 law.

23 **SECTION 5. CHIEF HEARING OFFICER--POWERS AND DUTIES.--**

24 A. The chief:

25 (1) shall supervise and manage the office;

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1 (2) shall employ hearing officers and other
2 staff as necessary to carry out the duties of the office;

3 (3) shall assign hearing officers in any case
4 referred to the office, giving preference to hearing officers
5 with subject matter expertise and taking into consideration
6 possible conflicts of interest;

7 (4) shall ensure the decisional independence
8 of each hearing officer;

9 (5) shall adopt and promulgate a code of
10 conduct for hearing officers; and

11 (6) may enter into contracts.

12 B. To better manage resources and limit costs to
13 the office, a contract attorney shall not act as a hearing
14 officer unless authorized by the chief.

15 SECTION 6. CONDUCT OF ADMINISTRATIVE HEARINGS--AGENCY
16 COOPERATION.--

17 A. Every administrative hearing shall be conducted
18 as provided by the law applicable to the case being heard.
19 Except for the rules relating to discovery, the technical rules
20 of evidence and the Rules of Civil Procedure for the District
21 Courts do not apply to administrative hearings before the chief
22 or hearing officers. The rules relating to discovery shall
23 only apply to the parties to the hearings.

24 B. When the office accepts a request for a hearing
25 officer, the requesting agency shall take no further action

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1 with respect to the matter, except as party litigant. Nothing
2 in this subsection shall be construed to prevent a termination
3 or modification of the proceeding by an agency prior to the
4 issuance of a final decision or recommendation by the hearing
5 officer.

6 C. Judicial review of an agency decision reviewed
7 by the office shall be in accordance with the law applicable to
8 the case being heard.

9 D. All agencies shall cooperate fully with the
10 office in the discharge of the office's duties.

11 E. Except as otherwise provided in this section,
12 all hearings for which a hearing officer may or shall be
13 appointed, as required by law or rule of an agency, shall be
14 conducted by the office.

15 F. A rulemaking proceeding may be subject to the
16 Administrative Hearings Act at the request of an agency head.

17 G. The Administrative Hearings Act shall not apply
18 if an agency head hears the permitting or adjudicatory matter
19 without delegation or assignment to a hearing officer.

20 SECTION 7. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,
21 FUNCTIONS, APPROPRIATIONS AND PROPERTY--CONTRACTUAL
22 OBLIGATIONS--STATUTORY REFERENCES.--

23 A. As used in this section, "agency" means any
24 agency, board, commission, department, institution or officer
25 of the state government except the judicial and legislative

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1 branches of the state government and the public regulation
2 commission.

3 B. On July 1, 2011, all agency hearing officers,
4 hearing examiners and support staff for those positions shall
5 become employees of the administrative hearings office.

6 C. On July 1, 2011, all functions, records,
7 furniture, equipment and other property, appropriations and
8 money attributable to agency hearing officers, hearing
9 examiners and support staff for those positions shall be
10 transferred to the administrative hearings office. The
11 administrative hearings office personnel and property shall not
12 occupy a new physical office location until practicable.

13 D. On July 1, 2011, all contractual obligations of
14 an agency regarding hearing officers, hearing examiners and
15 support staff for those positions shall be transferred to the
16 administrative hearings office.

17 E. All agency hearing officers and hearing
18 examiners transferred to the administrative hearings office
19 pursuant to this section shall be classified as hearing
20 officers, regardless of the minimum qualifications listed in
21 Subsection E of Section 4 of the Administrative Hearings Act.

22 F. On July 1, 2011, all references in the law to
23 agency hearing officers or hearing examiners shall be deemed to
24 be references to agency hearing officers as provided by the
25 Administrative Hearings Act and all references in the law to

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1 administrative hearings shall be deemed to be references to
2 administrative hearings as provided by the Administrative
3 Hearings Act. Administrative hearings shall be conducted by
4 the administrative hearings office pursuant to the provisions
5 of the Administrative Hearings Act.

6 SECTION 8. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2011.

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