

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 349

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

LUCIANO "LUCKY" VARELA

AN ACT

RELATING TO DISTRICT ATTORNEYS; CREATING THE DISTRICT ATTORNEYS'  
EMPLOYEES GRIEVANCE BOARD; PRESCRIBING POWERS AND DUTIES;  
PROVIDING GROUNDS FOR GRIEVANCE; AMENDING, REPEALING AND  
ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the District Attorney  
Personnel and Compensation Act is enacted to read:

" [NEW MATERIAL] DISTRICT ATTORNEYS' EMPLOYEES GRIEVANCE  
BOARD CREATED. --

A. The "district attorneys' employees grievance  
board" is created. The president of the district attorneys'  
association shall appoint the members of the board. The  
grievance board shall be composed of a deputy district attorney,  
the personnel director of the administrative office of the

Underscored material = new  
[bracketed material] = delete

1 district attorneys and three full-time employees of a district  
2 attorney's office. No two members shall be employed by the same  
3 district attorney. The grievance board shall select a chairman  
4 from its membership on an annual basis.

5 B. All grievance board members shall be appointed  
6 for a term of two years.

7 C. If any grievance board member is employed by the  
8 same district attorney as the appellant in an appeal, that  
9 member shall be disqualified and an alternate member shall be  
10 named by the chairman. If the appellant in an appeal is an  
11 employee of the chairman of the grievance board, the president  
12 of the district attorneys' association shall name a chairman pro  
13 tempore to preside over the appeal.

14 D. If the personnel director of the administrative  
15 office of the district attorneys is unable to serve in a  
16 particular appeal, the president of the district attorneys'  
17 association shall name a personnel officer from another state  
18 agency to participate as a grievance board member in the appeal.

19 E. Grievance board members may be reimbursed for per  
20 diem and mileage in accordance with the Per Diem and Mileage  
21 Act. "

22 Section 2. Section 36-1A-3 NMSA 1978 (being Laws 1991,  
23 Chapter 175, Section 3) is amended to read:

24 "36-1A-3. DEFINITIONS. --As used in the District Attorney  
25 Personnel and Compensation Act:

Underscored material = new  
[bracketed material] = delete

1           A. "appeal" means a formal request for a full  
2 hearing before the grievance board [~~or authorized hearing~~  
3 ~~officer~~] to review a disciplinary action solely involving  
4 suspension, demotion, [~~or~~] termination or any action that  
5 results in an economic loss to an employee, including matters  
6 involving leave, of a covered employee in a district attorney's  
7 office;

8           B. "board" means the district attorney personnel  
9 review board;

10          C. "class specification" means a written statement  
11 of the duties and responsibilities characteristic of a class of  
12 positions and includes the class title, supervision exercised  
13 and received, guidelines available, examples of work performed,  
14 working conditions and minimum qualifications or substitutions  
15 thereof that specify education, training, health, experience,  
16 knowledge, abilities and skills required for a position;

17          D. "classification series" means a group of class  
18 specifications or employment positions similar enough in powers  
19 and responsibilities that they can be covered by similar  
20 qualifications and titles. A classification series may consist  
21 of many levels, starting with the entry level position and  
22 advancing upward in duties, complexity, authority and  
23 responsibility;

24          E. "compensation plan" means a plan that establishes  
25 for each class in the plan a salary range that consists of at

Underscored material = new  
[bracketed material] = delete

1 least minimum and maximum salaries, as authorized by the  
2 legislature;

3 F. "covered employee" means a person in a full-time  
4 or part-time covered position who has successfully completed the  
5 probationary period and is covered by all provisions of the  
6 District Attorney Personnel and Compensation Act;

7 G. "covered position" means any position within a  
8 district attorney's office except the positions of district  
9 attorney, attorney, district office manager and special program  
10 director;

11 H. "disciplinary action" means a suspension,  
12 demotion, ~~[or]~~ dismissal or any action that results in an  
13 economic loss to an employee, including matters involving leave  
14 of a covered employee;

15 I. "district attorneys" means the ~~[present]~~ current  
16 fourteen duly elected district attorneys, or a substitute  
17 appointee for one of them, plus any additional elected district  
18 attorneys or future appointees created after the effective date  
19 of the District Attorney Personnel and Compensation Act;

20 J. "employee" means a person in a full-time or part-  
21 time position in a district attorney's office, but shall not be  
22 construed to include district attorneys;

23 K. "grievance board" means the district attorneys'  
24 employees grievance board;

25 ~~[K.]~~ L. "performance evaluation" means the written

Underscored material = new  
[bracketed material] = delete

1 appraisal of an employee's performance of assigned duties;

2 [L-] M. "position" means any position in a district  
3 attorney's office; and

4 [M-] N. "probationary employee" means a person who  
5 is appointed to a covered position but who has not yet completed  
6 the probationary period. "

7 Section 3. Section 36-1A-7 NMSA 1978 (being Laws 1991,  
8 Chapter 175, Section 7) is amended to read:

9 "36-1A-7. BOARD--DUTIES.--The board shall:

10 A. recommend to the district attorneys regulations  
11 necessary or appropriate to implement and administer the  
12 District Attorney Personnel and Compensation Act;

13 B. determine the qualifications for each class  
14 specification or classification series, including required  
15 levels of education, experience, special skills and legal  
16 knowledge;

17 C. prepare class specifications to be performed in  
18 each class of positions;

19 D. recommend a compensation plan of pay ranges to  
20 which class specifications and classification series are  
21 assigned, subject to legislative appropriations;

22 ~~[E. hear appeals solely involving suspension,  
23 demotion or termination of a covered employee, and render its  
24 final decision, unless the covered employee elects under Section  
25 9 of the District Attorney Personnel and Compensation Act to~~

.115065.2

Underscored material = new  
[bracketed material] = delete

1 ~~have the appeal heard by a state personnel office designated~~  
2 ~~hearing officer;~~

3 F.] E. make periodic reviews of the personnel  
4 regulations, classification plan and compensation ranges that  
5 govern employees to ensure that all federal action, legislative  
6 mandates and other substantive changes are incorporated into the  
7 regulations in a timely fashion and make recommendations thereon  
8 to the district attorneys;

9 [G.] E. recommend to the district attorneys to  
10 contract for services of consultants necessary to perform a  
11 compensation or classification plan of all district attorney  
12 positions, subject to legislative appropriation; and

13 [H.] G. consider other personnel matters as  
14 designated by the district attorneys, except appeals of  
15 disciplinary actions. "

16 Section 4. Section 36-1A-8 NMSA 1978 (being Laws 1991,  
17 Chapter 175, Section 8) is amended to read:

18 "36-1A-8. RULES-- ADOPTION-- COVERAGE. --

19 A. Personnel rules shall be promulgated by the  
20 district attorneys and shall be effective when filed as required  
21 by law.

22 B. The personnel rules of the district attorneys  
23 shall include provisions governing:

- 24 (1) a classification plan for all positions;  
25 (2) a compensation plan for all positions;

Underscored material = new  
[bracketed material] = delete

1 (3) a reasonable period of probation during  
2 which a probationary employee may be discharged, demoted or  
3 transferred without benefit of hearing;

4 (4) hours of work requirements and holiday,  
5 overtime and leave policies;

6 (5) the evaluation of performance of employees  
7 for the purpose of improving staff effectiveness;

8 (6) any reduction in force needed due to lack  
9 of funds or work, abolition of a position, material change in  
10 duties or reorganization;

11 (7) promotions or transfers, which shall give  
12 appropriate consideration to the applicant's qualifications,  
13 skills, job performance and duties; and

14 (8) a disciplinary procedure, which shall  
15 provide for an equitable response to infractions of rules or  
16 work performance standards [~~and~~

17 ~~(9) an appeal process to review a disciplinary~~  
18 ~~action solely involving suspension, demotion or termination]. "~~

19 Section 5. Section 36-1A-9 NMSA 1978 (being Laws 1991,  
20 Chapter 175, Section 9) is repealed and a new Section 36-1A-9  
21 NMSA 1978 is enacted to read:

22 "36-1A-9. [NEW MATERIAL] APPEALS BY COVERED EMPLOYEES TO  
23 THE GRIEVANCE BOARD. --

24 A. The grievance board shall adopt rules and  
25 regulations for the internal resolution of disputes concerning

1 dismissal, demotion, suspension or an action that results in  
2 economic loss within each district attorney's office. Such  
3 rules shall be distributed to each district attorney and notice  
4 of them shall be given to all employees. The director of the  
5 administrative office of the district attorneys shall promulgate  
6 forms for all grievance procedures.

7 B. A covered employee who is dismissed, demoted,  
8 suspended or is the subject of an action that results in an  
9 economic loss, including matters of leave, may, within thirty  
10 days after exhaustion of all internal remedies, appeal the  
11 dismissal, demotion, suspension or action resulting in economic  
12 loss to the grievance board.

13 C. Appeals shall be heard by the grievance board.  
14 The chairman of the grievance board shall, within ninety days,  
15 set the appeal down for hearing at a time and place convenient  
16 to the parties. The chairman of the grievance board shall  
17 preside over and take evidence at any hearing held pursuant to  
18 this section. The appellant and the affected district attorney  
19 shall have the right to be heard publicly and to present facts  
20 pertinent to the appeal. The appellant may be represented by  
21 counsel of his choice at his own expense. Three members of the  
22 grievance board shall constitute a quorum to transact business.  
23 The grievance board shall render a final decision on the appeal,  
24 which shall include findings of fact and conclusions of law.  
25 The grievance board's decision shall be binding.

Underscored material = new  
[bracketed material] = delete

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

D. Formal rules of evidence shall not apply to appeals to the grievance board, but the chairman may limit material that is repetitious or irrelevant.

E. A record shall be made of the hearing, which shall be transcribed if there is an appeal to the district court. The cost of transcript may be assessed by the court to the losing party on appeal.

F. If the grievance board finds that the action taken was without just cause, the grievance board may modify the disciplinary action or order the reinstatement of the appellant to his former position or to a position of like status and pay. When the grievance board orders a reinstatement of an appellant, the reinstatement shall be effective within thirty days after the service of a written copy of the decision on the affected district attorney. The grievance board may award back pay as of the date of the dismissal, demotion or suspension, as of such later date as the order may specify, or may reinstate leave if that was the nature of the grievance.

G. Any party aggrieved by the decision of the grievance board may appeal the decision to the district court in the district in which he resides, is employed or maintains his principal office, or to the district court for the district of Santa Fe county. The appeal shall be initiated by filing a notice of appeal with the clerk of the appropriate district court within thirty days after the service on that party of a

1 written copy of the final decision of the grievance board. Upon  
2 appeal the district court shall affirm the decision of the  
3 grievance board unless the decision is found to be:

4 (1) arbitrary, capricious or an abuse of  
5 discretion;

6 (2) not supported by substantial evidence; or

7 (3) otherwise not in accordance with law.

8 H. An appeal from the decision of the district court  
9 may be taken to the court of appeals in accordance with the  
10 rules of civil procedure. "

# State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

February 7, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 349

has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

---

Thomas P. Foy, Chairman

Underscored material = new  
[bracketed material] = delete

**FORTY- THIRD LEGISLATURE  
FIRST SESSION, 1997**

- 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

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

Underscored material = new  
~~[bracketed material] = delete~~



**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

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

Respectfully submitted,

\_\_\_\_\_  
KEYBOARD([Type Name of  
Chairperson and CLICK on  
CONTINUE]), Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

Underscored material = new  
[bracketed material] = delete

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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

The roll call vote was KEYBOARD([TYPE NUMBER FOR and CLICK on  
CONTINUE]) For KEYBOARD([TYPE NUMBER AGAINST and CLICK on  
CONTINUE]) Against

Yes: KEYBOARD([TYPE NUMBER and CLICK on CONTINUE])

No: KEYBOARD([Type Names; IF NONE, DELETE THIS LINE and  
CLICK on CONTINUE])

Excused: KEYBOARD([Type Names or None and CLICK on CONTINUE])

Absent: KEYBOARD([Type Names or None and CLICK on CONTINUE])

KEYBOARD([TYPE 202 NO. IF LCS RETRIEVAL and CLICK on CONTINUE])

M \H0349Rios, Sanchez

Absent: None

M \H0349

Underscored material = new  
[bracketed material] = delete

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

Page 16

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

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 5, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 349

has had it under consideration and reports same with  
recommendation that it DO PASS, and thence referred to the  
FINANCE COMMITTEE.

Respectfully submitted,

---

Fernando R. Macias, Chairman

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Lopez, Sanchez

Absent: None

H0349JU1

Underscored material = new  
[bracketed material] = delete

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

Page 18

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

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 12, 1997

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

HOUSE BILL 349

has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

\_\_\_\_\_  
Ben D. Altamirano, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Carraro, Fidel, Ingle, Lyons, McKibben

Absent: None

H0349FC1

Underscored material = new  
~~[bracketed material] = delete~~