

AN ACT  
RELATING TO GOVERNMENTAL AGENCIES; AMENDING AND ENACTING  
SECTIONS OF THE GOVERNMENTAL DISPUTE RESOLUTION ACT.

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. -- Chapter 12, Article 8A NMSA 1978 may be cited as the "Governmental Dispute Resolution Act". "

Section 2. Section 12-8A-2 NMSA 1978 (being Laws 2000, Chapter 65, Section 2) is amended to read:

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

A. "agency" means the state, political subdivisions of the state and any of their branches, agencies, departments, boards, instrumentalities or institutions;

B. "alternative dispute resolution" means a process other than litigation used to resolve disputes, issues or controversies, including mediation, facilitation, regulatory negotiation, fact-finding, conciliation, early neutral evaluation and policy dialogues;

C. "council" means the alternative dispute resolution council;

D. "director" means the director of the office of

dispute resolution;

E. "fund" means the alternative dispute resolution fund;

F. "neutral" means a person who may be an employer of an agency, who provides services as a mediator, fact-finder or conciliator or who otherwise aids parties to resolve disputes; and

G. "office" means the office of dispute resolution. "

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

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

A. An agency shall develop procedures for providing alternative dispute resolution to resolve disputes, issues or controversies involving any of the agency's operations, programs or functions, including formal and informal adjudications, rulemakings, enforcement actions, permitting, certifications, licensing, policy development and contract administration. Alternative dispute resolution procedures are voluntary and may be used at the discretion of the agency or at the request of an interested party to a dispute.

B. An agency that chooses to use an alternative dispute resolution process shall develop an agreement with interested parties that:

(1) provides for the appointment of neutrals serving at the will of all parties. A neutral, consultant or expert shall have no official, financial or personal conflict of interest with any issue or party in controversy unless the conflict of interest is fully disclosed in writing to all of the parties and all parties agree that the person may continue to serve;

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

(3) establishes rules for the alternative dispute resolution procedures; and

(4) sets forth how costs and expenses shall be equitably apportioned among the parties.

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

D. The administrative head of an agency with more than twenty-five employees shall designate an employee as the alternative dispute resolution coordinator for that agency. The coordinator shall:

(1) make recommendations to the agency's executive staff on issues and disputes that are suitable for

alternative dispute resolution;

(2) analyze the agency's enabling statutes and rules to determine whether they contain impediments to the use of alternative dispute resolution procedures and suggest any modifications;

(3) monitor the agency's use of alternative dispute resolution procedures;

(4) arrange for training of agency staff in alternative dispute resolution procedures;

(5) provide information about the agency's alternative dispute resolution procedures to the agency's staff and to the public;

(6) coordinate the agency's alternative dispute resolution program;

(7) inform and consult with the office about the activities, programs and procedures of the agency's alternative dispute resolution program; and

(8) report to the office by August 1 of each year on the agency's alternative dispute resolution activities. "

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

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

A. An agency may take fiscal actions necessary to achieve the objectives of the Governmental Dispute Resolution Act and pay for costs incurred in taking those

actions, including reasonable fees for training, policy review, system design, evaluation and the use of impartial third parties. Unless specifically prohibited by law, an agency may request category transfers pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978 for the purpose of paying the necessary costs incurred in meeting the objectives of the Governmental Dispute Resolution Act.

B. An agency may contract with another agency, the office or with a private entity for any service necessary to meet the objectives of the Governmental Dispute Resolution Act. "

Section 5. A new section of the Governmental Dispute Resolution Act is enacted to read:

"ALTERNATIVE DISPUTE RESOLUTION ADVISORY COUNCIL--  
MEMBERS--TERMS--DUTIES.--

A. There is created the "alternative dispute resolution advisory council" composed of seven members as follows:

(1) three members appointed by the governor;

(2) one member appointed by the chief justice of the supreme court;

(3) one member appointed by the president pro tempore of the senate;

(4) one member appointed by the speaker of the house of representatives; and

(5) one member appointed by the attorney general.

B. Members of the council shall be appointed for four-year terms; provided that two of the initial gubernatorial appointments and the initial appointment of the president pro tempore of the senate shall be for two years. Members of the council shall be knowledgeable and experienced in alternative dispute resolution and representative of both the public and private sectors. The initial appointments shall be made no later than July 1, 2001.

C. The council shall meet within two weeks after all of the initial members have been appointed, shall establish rules for the conduct of its business and shall elect a chair and such other officers as it deems necessary.

D. The public members of the council shall receive no compensation but shall be reimbursed for per diem and mileage pursuant to the Per Diem and Mileage Act.

E. The council shall provide policy advice for the coordination, funding and evaluation of dispute resolution and conflict management programs, education, training and research in this state.

F. The office shall provide staff and meeting facilities for the council."

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

"OFFICE OF DISPUTE RESOLUTION-- POWERS-- DUTIES. --

A. The "office of dispute resolution" is created. The office shall be under the direction and control of a director, appointed by the secretary of finance and administration with the approval of the governor. The director shall be subject to the provisions of the Personnel Act. The director shall be a person with substantial training and professional experience in dispute resolution and the operations of New Mexico state government, shall maintain complete impartiality with respect to the matters coming before the office and shall devote full time to the duties of the office.

B. The office shall be available to assist agencies to improve the resolution of disputes or avoid potential disputes that arise within their jurisdictions. The office may:

(1) facilitate the resolution of disputes through the provision of impartial mediation and dispute resolution services;

(2) assist agencies in the development of processes through which concerns of public policy may be addressed productively;

(3) establish standards for the selection, assignment and conduct of persons acting on behalf of the office or of an agency in the resolution of disputes;

(4) conduct educational programs and

provide other services designed to reduce the occurrence, magnitude or cost of disputes;

(5) design, develop or operate dispute resolution programs or assist agencies to establish, improve or expand their existing dispute resolution programs; or

(6) take other such action as will promote and facilitate dispute resolution by agencies.

C. The director may:

(1) establish reasonable fees or assessments for services provided by the office; any such fees or assessments shall be deposited in the fund;

(2) apply for and accept on behalf of the state any federal, local or private grants, bequests, gifts or contributions made available for the purpose of encouraging, promoting for establishing dispute resolution programs in the state or to aid in the financing of the programs or activities of the office; any money received pursuant to this paragraph shall be deposited in the fund;

(3) establish such advisory committees as the director deems appropriate to assist in the implementation of the Governmental Dispute Resolution Act;

(4) enter into agreements with agencies and contract with other persons, including private persons, to carry out the provisions of the Governmental Dispute Resolution Act; or

(5) may adopt such guidelines as may be



necessary to carry out the provisions of the Governmental Dispute Resolution Act.

D. The office shall prepare annually a report on the status of public sector dispute resolution in the state and file the report, no later than October 1 of each year, with the governor, the chief justice of the supreme court and the chief clerks of the house of representatives and the senate.

E. The office shall be administratively attached to the department of finance and administration. "

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

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"ALTERNATIVE DISPUTE RESOLUTION FUND. --The "alternative dispute resolution fund" is created in the state treasury. The fund shall consist of all appropriations made to the fund and all fees, assessments, grants, bequests, gifts, contributions and other receipts collected or received by the office. Earnings from the fund shall be credited to the fund and the fund shall not revert to any other fund. Money in the fund is appropriated to the office for the purpose of carrying out the provisions of the Governmental Dispute Resolution Act. "

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

"TERMINATION OF AGENCY LIFE--DELAYED REPEAL. --The office of dispute resolution is terminated on July 1, 2006

pursuant to the Sunset Act. The office shall continue to operate according to the provisions of the Governmental Dispute Resolution Act until July 1, 2007. Effective July 1, 2007, Chapter 12, Article 8A NMSA 1978 is repealed."=====

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