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**SENATE BILL 353**

**45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002**

**INTRODUCED BY**

**William H. Payne**

**AN ACT**

**RELATING TO THE ATTORNEY GENERAL; PROVIDING FOR HIS  
REPRESENTATION OF THE STATE; AUTHORIZING OTHER LEGAL COUNSEL  
TO REPRESENT THE STATE IN CERTAIN SITUATIONS; AMENDING 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 Chapter 8, Article 5 NMSA  
1978 is enacted to read:**

**" [NEW MATERIAL] ATTORNEY-CLIENT RELATIONSHIP. -- When  
representing the governor, lieutenant governor, secretary of  
state, state treasurer, state auditor, commissioner of public  
lands, a governmental entity subject to the executive  
direction of one of the foregoing officers or an employee of  
that entity acting within the scope of his employment, the  
attorney general shall:**

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1           A. keep a person represented reasonably informed  
2 about the status of the matter in which the person is  
3 represented and reply promptly to reasonable requests for  
4 information from the person;

5           B. explain the matter in which the person is  
6 represented to a person represented to the extent reasonably  
7 necessary for the person to make informed decisions regarding  
8 the representation;

9           C. abide by the represented person's decision  
10 concerning the objectives of the representation and consult  
11 with the person about the means by which the objectives are to  
12 be pursued;

13           D. take no action to dismiss, settle or otherwise  
14 conclude the matter in which a person is represented without  
15 specific written authority to take the action on behalf of the  
16 person represented; and

17           E. if requested to do so by a person represented,  
18 establish protocols with the person to facilitate attorney-  
19 client communications and relationships. "

20           Section 2. A new section of Chapter 8, Article 5 NMSA  
21 1978 is enacted to read:

22           " [NEW MATERIAL] REPRESENTATION OF THE STATE. --

23           A. When representing the state as a named party in  
24 a civil matter in which the governor is not a named party, the  
25 attorney general shall:

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1 (1) have the power to take any action on  
2 behalf of the state in the matter that appears proper and in  
3 the best interests of the state;

4 (2) keep the governor reasonably informed  
5 about the status of the matter and comply promptly with  
6 requests from him for information; and

7 (3) inform the governor reasonably before  
8 taking an appeal in the civil matter or taking action that  
9 results in its conclusion.

10 B. When representing the state in civil claims by  
11 and against the state not yet in litigation, the attorney  
12 general shall neither institute a civil proceeding in court  
13 nor settle or compromise the claim without consulting with the  
14 governor. "

15 Section 3. A new section of Chapter 8, Article 5 NMSA  
16 1978 is enacted to read:

17 "[NEW MATERIAL] SUBSTITUTE COUNSEL IN CERTAIN  
18 INSTANCES. --

19 A. When it appears to either the attorney general  
20 or a represented officer or employee of the state that the  
21 attorney general's interest in a matter conflicts with the  
22 interests of an officer or employee that he is representing,  
23 the officer or employee may employ independent legal counsel  
24 to represent him

25 B. The governor may employ legal counsel to advise

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1 him or appear on his behalf in a civil legal action involving  
2 the state. "

3 Section 4. Section 36-1-22 NMSA 1978 (being Laws 1875-  
4 1876, Chapter 5, Section 1, as amended) is amended to read:

5 "36-1-22. POWERS-- COMPROMISES-- RELEASES. -- [~~SEC. 7. The~~  
6 ~~attorney general and~~] A district [~~attorneys of this State in~~  
7 ~~their respective districts~~] attorney, when [~~any~~] a civil  
8 [~~proceedings may be~~] proceeding is pending in [~~their~~] district  
9 court in his respective [~~districts in the district court~~]  
10 district in which [~~the state or any~~] a county [~~may be~~] within  
11 the district is a party, whether [~~the same be~~] it is an  
12 ordinary suit, scire facias proceedings, proceedings growing  
13 out of [~~any~~] a criminal prosecution or otherwise, [~~shall have~~  
14 ~~power to~~] may compromise or settle [~~said~~] the suit or  
15 proceedings, or grant a release or enter satisfaction in whole  
16 or in part, of [~~any~~] a claim or judgment in the name of the  
17 [~~state or~~] county, [~~or dismiss the same~~] or take any other  
18 [~~steps or proceedings therein which to him may appear proper~~  
19 ~~and right and all such~~] appropriate action. The civil [~~suits~~  
20 ~~and~~] proceedings shall be entirely under the management and  
21 control of the [~~said attorney general or~~] district [~~attorneys~~]  
22 attorney, and all compromises, releases and satisfactions  
23 [~~heretofore~~] made or entered into by [~~said officers~~] him prior  
24 to the effective date of this section are [~~hereby~~] confirmed  
25 and ratified. "

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