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HOUSE BILL 588

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

W. Ken Martinez

AN ACT

**RELATING TO GOVERNMENTAL AGENCIES; AMENDING AND ENACTING
SECTIONS OF THE GOVERNMENTAL DISPUTE RESOLUTION ACT; MAKING AN
APPROPRIATION; DECLARING AN EMERGENCY.**

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. -- [~~This act~~] 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

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1 subdivisions of the state and any of their branches, agencies,
2 departments, boards, instrumentalities or institutions;

3 B. "alternative dispute resolution" means a
4 process other than litigation used to resolve disputes,
5 including mediation, facilitation, regulatory negotiation,
6 fact-finding, conciliation, early neutral evaluation and
7 policy dialogues; ~~and~~

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

10 D. "director" means the director of the office of
11 dispute resolution;

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

14 ~~[E.]~~ F. "neutral" means a person who provides
15 services as a mediator, fact-finder or conciliator or who
16 otherwise aids parties to resolve disputes; and

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

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

21 "12-8A-3. ALTERNATIVE DISPUTE RESOLUTION--
22 AUTHORIZATION--PROCEDURES--AGENCY COORDINATORS.--

23 A. An agency ~~[may use an]~~ shall offer alternative
24 dispute resolution ~~[procedure]~~ to resolve ~~[any dispute, issue~~
25 ~~or controversy]~~ disputes, issues or controversies involving

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1 any of the agency's operations, programs or functions,
2 including formal and informal adjudications, rulemakings,
3 enforcement actions, permitting, certifications, licensing,
4 policy development and contract administration. After the
5 initial offer by the agency, alternative dispute resolution
6 procedures are voluntary and may be used at the discretion of
7 the agency or at the request of an interested party to a
8 dispute.

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

12 (1) provides for the appointment of neutrals
13 [~~consultants or experts agreed upon by all parties and~~]
14 serving at the will of all parties. A neutral, consultant or
15 expert shall have no official, financial or personal conflict
16 of interest with any issue or party in controversy unless the
17 conflict of interest is fully disclosed in writing to all of
18 the parties and all parties agree that the person may continue
19 to serve;

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

25 (3) establishes rules for the alternative

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1 dispute resolution procedures; and

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

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

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

12 (1) make recommendations to the agency's
13 executive staff on issues and disputes that are suitable for
14 alternative dispute resolution;

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

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

21 (4) arrange for training of agency staff in
22 alternative dispute resolution procedures; ~~and~~

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

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

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

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

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

11 "12-8A-4. AGENCY BUDGETS--CONTRACTS FOR SERVICES. --

12 A. An agency may take fiscal actions necessary to
13 achieve the objectives of the Governmental Dispute Resolution
14 Act and pay for costs incurred in taking those actions,
15 including reasonable fees for training, policy review, system
16 design, evaluation and the use of impartial third parties.
17 Unless specifically prohibited by law, an agency may request
18 category transfers pursuant to Sections 6-3-23 through 6-3-25
19 NMSA 1978 for the purpose of paying the necessary costs
20 incurred in meeting the objectives of the Governmental Dispute
21 Resolution Act.

22 B. An agency may contract with [~~another agency~~]
23 the office or with a private entity for any service necessary
24 to meet the objectives of the Governmental Dispute Resolution
25 Act. "

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

3 "[NEW MATERIAL] ALTERNATIVE DISPUTE RESOLUTION ADVISORY
4 COUNCIL-- MEMBERS-- TERMS-- DUTIES. --

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

- 8 (1) three members appointed by the governor;
- 9 (2) one member appointed by the chief justice
10 of the supreme court;
- 11 (3) one member appointed by the president pro
12 tempore of the senate;
- 13 (4) one member appointed by the speaker of
14 the house of representatives; and
- 15 (5) one member appointed by the attorney
16 general.

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

25 C. The council shall meet within two weeks after

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1 all of the initial members have been appointed, shall
2 establish rules for the conduct of its business and shall
3 elect a chair and such other officers as it deems necessary.

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

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

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

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

15 "[NEW MATERIAL] OFFICE OF DISPUTE RESOLUTION-- POWERS--
16 DUTIES. --

17 A. The "office of dispute resolution" is created.
18 The office shall be under the direction and control of a
19 director, appointed by the secretary of finance and
20 administration with the approval of the governor. The
21 director shall be subject to the provisions of the Personnel
22 Act. The director shall be a person with substantial training
23 and professional experience in dispute resolution and the
24 operations of New Mexico state government, shall maintain
25 complete impartiality with respect to the matters coming

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1 before the office and shall devote full time to the duties of
2 the office.

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

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

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

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

16 (4) conduct educational programs and provide
17 other services designed to reduce the occurrence, magnitude or
18 cost of disputes;

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

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

24 C. The director may:

25 (1) establish reasonable fees or assessments

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1 for services provided by the office; any such fees or
2 assessments shall be deposited in the fund;

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

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

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

17 (5) may adopt such rules as may be necessary
18 to carry out the provisions of the Governmental Dispute
19 Resolution Act.

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

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

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

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

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

17 "[NEW MATERIAL] TERMINATION OF AGENCY LIFE-- DELAYED
18 REPEAL. -- The office of dispute resolution is terminated on
19 July 1, 2006 pursuant to the Sunset Act. The office shall
20 continue to operate according to the provisions of the
21 Governmental Dispute Resolution Act until July 1, 2007.
22 Effective July 1, 2007, Chapter 12, Article 8A NMSA 1978 is
23 repealed. "

24 Section 9. APPROPRIATION. -- Sixty thousand dollars
25 (\$60,000) is appropriated from the general fund to the office

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1 of dispute resolution for expenditure in fiscal year 2002 for
2 costs incurred incidental to the start-up of the office. Any
3 unexpended or unencumbered balance remaining at the end of
4 fiscal year 2002 shall revert to the general fund.

5 Section 10. EMERGENCY.--It is necessary for the public
6 peace, health and safety that this act take effect
7 immediately.

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