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BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; ENACTING THE ADMINISTRATIVE HEARINGS ACT; CREATING THE ADMINISTRATIVE HEARING 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 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 hearing officers and hearing functions of all state agencies.

SECTION 3. DEFINITIONS.--As used in the Administrative

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1 Hearings Act:

2 A. "chief" means the chief hearing officer; and

3 B. "office" means the administrative hearing
4 office.

5 SECTION 4. ADMINISTRATIVE HEARING OFFICE--CREATED--
6 ADMINISTRATIVE ATTACHMENT--CHIEF HEARING OFFICER--APPOINTMENT--
7 QUALIFICATIONS.--

8 A. The "administrative hearing office" is created
9 and is administratively attached to the office of the attorney
10 general.

11 B. 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 a state agency, shall
14 be conducted by the office.

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

17 D. 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 office.

20 E. The head of the office is the "chief hearing
21 officer". The chief hearing officer of the taxation and
22 revenue department shall serve as the interim chief for the
23 first year of operation; thereafter, the chief shall be
24 appointed by the attorney general and confirmed by the senate
25 for the remainder of a six-year term beginning July 1, 2012.

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1 The term of a chief shall be six years, and a chief may serve
2 more than one term. A chief may be removed only for
3 malfeasance, misfeasance or neglect of duty. If a vacancy
4 occurs in the position of chief, it shall be filled by
5 appointment by the attorney general for the remainder of the
6 unexpired term.

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

11 G. The chief shall:

12 (1) supervise and manage the office;

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

15 (3) enter into contracts;

16 (4) assign hearing officers in any case
17 referred to the office, giving preference to subject matter
18 expertise;

19 (5) ensure the decisional independence of each
20 hearing officer; and

21 (6) adopt and promulgate a code of conduct for
22 hearing officers.

23 SECTION 5. HEARING OFFICERS--APPOINTMENT--

24 QUALIFICATIONS--OATH OF OFFICE--FULL-TIME EMPLOYMENT.--

25 A. Hearing officers are subject to the provisions

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1 of the Personnel Act. At the time of employment, a hearing
2 officer shall have been practicing law in New Mexico for at
3 least seven years, with at least five years' experience in
4 administrative law.

5 B. The chief and other hearing officers shall:

6 (1) take the oath of office required by the
7 constitution of New Mexico. Once a code of conduct is adopted,
8 the chief and all other hearing officers shall sign the code of
9 conduct and file it with the office. The code of conduct shall
10 be reviewed and signed annually; and

11 (2) devote themselves full time to the duties
12 of the office and shall not engage in the private practice of
13 law.

14 SECTION 6. CONDUCT OF HEARINGS--AGENCY COOPERATION.--

15 A. Every hearing shall be conducted as provided by
16 the law applicable to the case being heard. When the office
17 accepts a referral for a hearing officer, the referring state
18 agency shall take no further action with respect to the matter,
19 except as party litigant. Nothing in this subsection shall be
20 construed to prevent a termination or modification of the
21 proceeding by a state agency prior to the issuance of a final
22 decision or recommendation by the hearing officer.

23 B. Judicial review of an agency decision reviewed
24 by the office shall be in accordance with the law applicable to
25 the case being heard.

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1 C. All state agencies shall cooperate fully with
2 the office in the discharge of the office's duties.

3 **SECTION 7. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,**
4 **FUNCTIONS, APPROPRIATIONS AND PROPERTY--STATUTORY REFERENCES.--**

5 A. On the effective date of the Administrative
6 Hearings Act, all hearing officers, hearing examiners and
7 support staff for those positions employed by the state shall
8 be transferred to the office.

9 B. On the effective date of the Administrative
10 Hearings Act, all functions, appropriations, money, records,
11 furniture, equipment and other property of the hearing
12 officers, hearing examiners and support staff for those
13 positions employed by the state shall be transferred to the
14 administrative hearing office.

15 C. All hearing officers and hearing examiners
16 transferred to the administrative hearing office pursuant to
17 this section shall be classified as hearing officers,
18 regardless of the minimum qualifications listed in Section 5 of
19 the Administrative Hearings Act.

20 D. On the effective date of the Administrative
21 Hearings Act, all references in the law to hearing officers,
22 hearing examiners or administrative hearings shall be deemed to
23 be references in law to hearing officers as defined by that
24 act and hearings shall be conducted by the administrative
25 hearing office pursuant to the provisions of that act.

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