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SENATE BILL 104

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

INTRODUCED BY

Tim Eichenberg

FOR THE GOVERNMENT RESTRUCTURING TASK FORCE

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 AGENCIES OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT; 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 agencies of the executive branch of state

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1 government.

2 SECTION 3. DEFINITIONS.--As used in the Administrative
3 Hearings Act:

4 A. "agency" means any agency, board, commission,
5 department, institution or officer of the state government
6 except the judicial and legislative branches of the state
7 government;

8 B. "chief" means the chief hearing officer; and

9 C. "office" means the administrative hearing
10 office.

11 SECTION 4. ADMINISTRATIVE HEARING OFFICE--CREATED--
12 ADMINISTRATIVE ATTACHMENT--CHIEF HEARING OFFICER--APPOINTMENT--
13 QUALIFICATIONS.--

14 A. The "administrative hearing office" is created
15 and is administratively attached to the office of the attorney
16 general.

17 B. Except as otherwise provided in this section,
18 all hearings for which a hearing officer or administrative law
19 judge may or shall be appointed, as required by law or rule of
20 an agency, shall be conducted by the office. The
21 Administrative Hearings Act does not apply to hearings heard by
22 officers who do not fall under the Personnel Act.

23 C. An agency head may request that a rulemaking
24 proceeding be subject to the Administrative Hearings Act.

25 D. The Administrative Hearings Act shall not apply

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1 if an agency head hears the permitting or adjudicatory matter
2 without delegation or assignment to a hearing officer.

3 E. The Administrative Hearings Act shall not apply
4 if the hearing that is to be referred to the office is governed
5 by federal law.

6 F. The head of the office is the "chief hearing
7 officer". The chief hearing officer of the taxation and
8 revenue department shall serve as the interim chief for the
9 first year of operation. Beginning July 1, 2012 and
10 thereafter, the chief shall be appointed by the attorney
11 general and confirmed by the senate for a six-year term. The
12 term of a chief shall be six years, and a chief may serve more
13 than one term. A chief may be removed only for malfeasance,
14 misfeasance or neglect of duty. If a vacancy occurs in the
15 position of chief, it shall be filled by appointment by the
16 attorney general for the remainder of the unexpired term.

17 G. Except for the interim chief, at the time of
18 appointment, the chief shall have been admitted to practice law
19 in New Mexico for at least twelve years, with at least ten
20 years' experience in administrative law.

21 H. The chief shall:

- 22 (1) supervise and manage the office;
23 (2) employ hearing officers and other staff as
24 necessary to carry out the duties of the office;
25 (3) enter into contracts;

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- 1 (4) assign hearing officers in any case
- 2 referred to the office, giving preference to officers with
- 3 subject matter expertise;
- 4 (5) ensure the decisional independence of each
- 5 hearing officer; and
- 6 (6) adopt and promulgate a code of conduct for
- 7 hearing officers.

8 SECTION 5. HEARING OFFICERS--APPOINTMENT--
9 QUALIFICATIONS--OATH OF OFFICE--FULL-TIME EMPLOYMENT.--

10 A. Hearing officers are subject to the provisions
11 of the Personnel Act. At the time of employment, a hearing
12 officer shall have been practicing law in New Mexico for at
13 least seven years, with at least five years' experience in
14 administrative law.

- 15 B. The chief and other hearing officers shall:
- 16 (1) take the oath of office required by the
 - 17 constitution of New Mexico. Once a code of conduct is adopted,
 - 18 the chief and all other hearing officers shall sign the code of
 - 19 conduct and file it with the office. The code of conduct shall
 - 20 be reviewed and signed annually; and
 - 21 (2) devote themselves full time to the duties
 - 22 of the office and shall not engage in the private practice of
 - 23 law.

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

25 A. Every administrative hearing shall be conducted

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1 as provided by the law applicable to the case being heard.
2 When the office accepts a referral for a hearing officer, the
3 referring agency shall take no further action with respect to
4 the matter, except as party litigant. After referral by the
5 referring agency, the hearing officer shall issue a decision or
6 recommendation as required by the law applicable to the case
7 being heard. Nothing in this subsection shall be construed to
8 prevent a termination or modification of the proceeding by an
9 agency prior to the issuance of a final decision or
10 recommendation by the hearing officer.

11 B. Judicial review of an agency decision reviewed
12 by the office shall be in accordance with the law applicable to
13 the case being heard.

14 C. All agencies shall cooperate fully with the
15 office in the discharge of the office's duties.

16 SECTION 7. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,
17 FUNCTIONS, APPROPRIATIONS AND PROPERTY--STATUTORY REFERENCES.--

18 A. On July 1, 2011, all agency hearing officers,
19 hearing examiners and support staff for those positions
20 employed by the state shall be transferred to the
21 administrative hearing office.

22 B. On July 1, 2011, all functions, appropriations,
23 money, records, furniture, equipment and other property of the
24 agency hearing officers, hearing examiners and support staff
25 for those positions employed by the state shall be transferred

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1 to the administrative hearing office.

2 C. All hearing officers and hearing examiners
3 transferred to the administrative hearing office pursuant to
4 this section shall be classified as hearing officers,
5 regardless of the minimum qualifications listed in Section 5 of
6 the Administrative Hearings Act.

7 D. As used in this section, "agency" means any
8 agency, board, commission, department, institution or officer
9 of the state government except the judicial and legislative
10 branches of the state government.

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

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