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SENATE BILL 371

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Antonio Maestas

AN ACT

RELATING TO THE OFFICE OF THE ATTORNEY GENERAL; CREATING AN EXCEPTION FROM THE PERSONNEL ACT FOR EMPLOYEES OF THE OFFICE OF THE ATTORNEY GENERAL; EXPANDING THE SCOPE OF THE DISTRICT ATTORNEY PERSONNEL AND COMPENSATION ACT TO INCLUDE EMPLOYEES OF THE OFFICE OF THE ATTORNEY GENERAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 10-9-4 NMSA 1978 (being Laws 1961, Chapter 240, Section 4, as amended) is amended to read:

"10-9-4. COVERAGE OF SERVICE.--The Personnel Act and the service cover all state positions except:

A. officials elected by popular vote or appointed to fill vacancies to elective offices;

B. members of boards and commissions and heads of agencies appointed by the governor;

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1 C. heads of agencies appointed by boards or
2 commissions;

3 D. directors of department divisions;

4 E. those in educational institutions and in public
5 schools;

6 F. those employed by state institutions and by
7 state agencies providing educational programs and who are
8 required to hold valid certificates as certified school
9 instructors as defined in Section 22-1-2 NMSA 1978 issued by
10 the public education department;

11 G. those in the governor's office;

12 H. those in the office of the attorney general;

13 ~~[H.]~~ I. those in the state militia or the
14 commissioned officers of the New Mexico state police division
15 of the department of public safety;

16 ~~[I.]~~ J. those in the judicial branch of government;

17 ~~[J.]~~ K. those in the public defender department,
18 upon implementation of personnel policies and rules by the
19 public defender commission;

20 ~~[K.]~~ L. those in the legislative branch of
21 government;

22 ~~[L.]~~ M. not more than two assistants and one
23 secretary in the office of each official listed in Subsections
24 A, B and C of this section, excluding members of boards and
25 commissions in Subsection B of this section;

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1 ~~[M.]~~ N. those of a professional or scientific
2 nature that are temporary in nature;

3 ~~[N.]~~ O. those filled by patients or inmates in
4 charitable, penal or correctional institutions;

5 ~~[O.]~~ P. state employees if the board in its
6 discretion decides that the position is one of policymaking;
7 and

8 ~~[P.]~~ Q. disadvantaged youth under twenty-two years
9 of age regularly enrolled or to be enrolled in a secondary
10 educational institution approved by the public education
11 department or in an accredited state institution of advanced
12 learning or vocational training and who are to be employed for
13 not more than seven hundred twenty hours during any calendar
14 year:

15 (1) the term "disadvantaged youth" shall be
16 defined for purposes of this exemption by regulation duly
17 promulgated by the board; and

18 (2) the board shall:

19 (a) require that all the criteria of
20 this subsection have been met;

21 (b) establish employment lists for the
22 certification of the highest-standing candidates to the
23 prospective employers; and

24 (c) establish the pay rates for such
25 employees."

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1 SECTION 2. Section 36-1A-2 NMSA 1978 (being Laws 1991,
2 Chapter 175, Section 2) is amended to read:

3 "36-1A-2. PURPOSE OF ACT--ENACTMENT UNDER CONSTITUTION.--
4 The purpose of the District Attorney Personnel and Compensation
5 Act is to establish for all district attorneys and the office
6 of the attorney general a uniform, equitable and binding system
7 of personnel administration. The system shall be based solely
8 on qualification and ability and will provide for
9 classifications, compensation, fringe benefits, disciplinary
10 procedures, appeal rights and other aspects of state
11 employment. The District Attorney Personnel and Compensation
12 Act will also provide a system of classification and
13 compensation of district attorney and attorney general
14 personnel that is comparable to the personnel system in effect
15 for other similar state employees. The District Attorney
16 Personnel and Compensation Act is enacted pursuant to the
17 provisions of Article 7, Section 2 of the constitution of New
18 Mexico."

19 SECTION 3. Section 36-1A-3 NMSA 1978 (being Laws 1991,
20 Chapter 175, Section 3) is amended to read:

21 "36-1A-3. DEFINITIONS.--As used in the District Attorney
22 Personnel and Compensation Act:

23 A. "appeal" means a formal request for a full
24 hearing before the board or authorized hearing officer to
25 review a disciplinary action solely involving suspension,

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1 demotion or termination of a covered employee in a district
2 attorney's office or the office of the attorney general;

3 B. "board" means the district attorney personnel
4 review board;

5 C. "class specification" means a written statement
6 of the duties and responsibilities characteristic of a class of
7 positions and includes the class title, supervision exercised
8 and received, guidelines available, examples of work performed,
9 working conditions and minimum qualifications or substitutions
10 thereof that specify education, training, health, experience,
11 knowledge, abilities and skills required for a position;

12 D. "classification series" means a group of class
13 specifications or employment positions similar enough in powers
14 and responsibilities that they can be covered by similar
15 qualifications and titles. A classification series may consist
16 of many levels, starting with the entry level position and
17 advancing upward in duties, complexity, authority and
18 responsibility;

19 E. "compensation plan" means a plan that
20 establishes for each class in the plan a salary range that
21 consists of at least minimum and maximum salaries, as
22 authorized by the legislature;

23 F. "covered employee" means a person in a full-time
24 or part-time covered position who has successfully completed
25 the probationary period and is covered by all provisions of the

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1 District Attorney Personnel and Compensation Act;

2 G. "covered position" means any position within a
3 district attorney's office or the office of the attorney
4 general except the positions of district attorney, attorney,
5 district office manager, public information officer, chief
6 financial officer, chief administrative officer, chief
7 information officer, human resources manager and special
8 program director;

9 H. "disciplinary action" means a suspension,
10 demotion or dismissal of a covered employee;

11 I. "district attorneys" means the [~~present~~] current
12 fourteen duly elected district attorneys, or a substitute
13 appointee for one of them, plus any additional elected district
14 attorneys or future appointees created after the effective date
15 of the District Attorney Personnel and Compensation Act;

16 J. "employee" means a person in a full-time or
17 part-time position in a district attorney's office or the
18 office of the attorney general, but shall not be construed to
19 include district attorneys or the attorney general;

20 K. "performance evaluation" means the written
21 appraisal of an employee's performance of assigned duties;

22 L. "position" means any position in a district
23 attorney's office or the office of the attorney general; and

24 M. "probationary employee" means a person who is
25 appointed to a covered position but who has not yet completed

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1 the probationary period."

2 SECTION 4. Section 36-1A-4 NMSA 1978 (being Laws 1991,
3 Chapter 175, Section 4) is amended to read:

4 "36-1A-4. COVERAGE OF SERVICE--EXEMPTIONS.--

5 A. The District Attorney Personnel and Compensation
6 Act shall cover all employees, except only covered employees
7 shall be entitled to utilize grievance procedures and the
8 appeals provisions in Section [~~9 of the District Attorney~~
9 ~~Personnel and Compensation Act~~] 36-1A-9 NMSA 1978.

10 B. The positions of attorney, district office
11 manager, public information officer, chief financial officer,
12 chief administrative officer, chief information officer, human
13 resources manager and special program director are "at will"
14 positions that serve at the pleasure of the district attorney
15 or the attorney general."

16 SECTION 5. Section 36-1A-5 NMSA 1978 (being Laws 1991,
17 Chapter 175, Section 5) is amended to read:

18 "36-1A-5. PERSONNEL BOARD--APPOINTMENT.--There is created
19 the "district attorney personnel review board". The board
20 shall consist of five district attorneys [~~including~~] and the
21 attorney general. District attorneys and the attorney general
22 shall annually elect a president, vice president, secretary-
23 treasurer and [~~two~~] three voting members [~~all elected annually~~
24 ~~by the district attorneys~~]."

25 SECTION 6. Section 36-1A-7 NMSA 1978 (being Laws 1991,

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1 Chapter 175, Section 7) is amended to read:

2 "36-1A-7. BOARD--DUTIES.--The board shall:

3 A. recommend to the district attorneys
4 ~~[regulations]~~ and the attorney general rules necessary or
5 appropriate to implement and administer the District Attorney
6 Personnel and Compensation Act;

7 B. determine the qualifications for each class
8 specification or classification series, including required
9 levels of education, experience, special skills and legal
10 knowledge;

11 C. prepare class specifications to be performed in
12 each class of positions;

13 D. recommend a compensation plan of pay ranges to
14 which class specifications and classification series are
15 assigned, subject to legislative appropriations;

16 E. hear appeals solely involving suspension,
17 demotion or termination of a covered employee, and render its
18 final decision, unless the covered employee elects under
19 Section ~~[9 of the District Attorney Personnel and Compensation~~
20 ~~Act]~~ 36-1A-9 NMSA 1978 to have the appeal heard by a state-
21 personnel-office-designated hearing officer;

22 F. make periodic reviews of the personnel
23 regulations, classification plan and compensation ranges that
24 govern employees to ensure that all federal action, legislative
25 mandates and other substantive changes are incorporated into

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1 the [~~regulations~~] rules in a timely fashion and make
2 recommendations thereon to the district attorneys and the
3 attorney general;

4 G. recommend to the district attorneys and to the
5 attorney general to contract for services of consultants
6 necessary to perform a compensation or classification plan of
7 all district attorney and attorney general positions, subject
8 to legislative appropriation; and

9 H. consider other personnel matters as designated
10 by the district attorneys and the attorney general."

11 SECTION 7. Section 36-1A-8 NMSA 1978 (being Laws 1991,
12 Chapter 175, Section 8) is amended to read:

13 "36-1A-8. RULES--ADOPTION--COVERAGE.--

14 A. Personnel rules shall be promulgated by the
15 district attorneys and the attorney general and shall be
16 effective when filed as required by law.

17 B. The personnel rules of the district attorneys
18 and the attorney general shall include provisions governing:

19 (1) a classification plan for all positions;

20 (2) a compensation plan for all positions;

21 (3) a reasonable period of probation during
22 which a probationary employee may be discharged, demoted or
23 transferred without benefit of hearing;

24 (4) hours of work requirements and holiday,
25 overtime and leave policies;

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1 (5) the evaluation of performance of employees
2 for the purpose of improving staff effectiveness;

3 (6) any reduction in force needed due to lack
4 of funds or work, abolition of a position, material change in
5 duties or reorganization;

6 (7) promotions or transfers, which shall give
7 appropriate consideration to the applicant's qualifications,
8 skills, job performance and duties;

9 (8) a disciplinary procedure, which shall
10 provide for an equitable response to infractions of rules or
11 work performance standards; and

12 (9) an appeal process to review a disciplinary
13 action solely involving suspension, demotion or termination."

14 SECTION 8. Section 36-1A-11 NMSA 1978 (being Laws 1991,
15 Chapter 175, Section 11) is amended to read:

16 "36-1A-11. DISTRICT ATTORNEYS AND ATTORNEY GENERAL TO
17 ESTABLISH A COMPENSATION PLAN COVERAGE.--

18 A. The district attorneys and the attorney general
19 shall establish a compensation plan for all employees of
20 district attorneys or the attorney general. Before being
21 implemented, the compensation plan shall be reviewed by the
22 legislative finance committee and approved by the department of
23 finance and administration. The compensation plan shall
24 substantially conform to the compensation plan and
25 classification series in effect for all other state employees.

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1 In addition, the plan shall include class specifications and
2 requirements for performance evaluation.

3 B. The compensation plan provided by this section
4 and adopted by the district attorneys and the attorney general
5 shall apply to all employees."

6 SECTION 9. Section 36-1A-12 NMSA 1978 (being Laws 1991,
7 Chapter 175, Section 12) is amended to read:

8 "36-1A-12. ADDITIONAL DUTIES OF DISTRICT ATTORNEYS AND
9 THE OFFICE OF THE ATTORNEY GENERAL.--The district attorneys as
10 a group and the attorney general shall:

11 A. adopt and promulgate [~~regulations~~] rules to
12 effectuate the provisions of the compensation plan for all
13 employees;

14 B. conduct periodic reviews of the [~~regulations~~]
15 rules, classification series and compensation ranges to ensure
16 that applicable federal action, legislative mandates and other
17 substantive changes are incorporated in the compensation plan
18 in a timely fashion;

19 C. contract for consultant services to reevaluate
20 the classification and compensation plans to ensure their
21 compatibility, subject to legislative appropriation, with
22 classes covered by the Personnel Act and the judicial pay plan;
23 and

24 D. prepare an annual fiscal report and specify
25 proposed changes, if any, to the compensation plan prior to

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1 each regular legislative session. Before any proposed changes
2 are implemented, they shall be reviewed by the legislative
3 finance committee and approved by the department of finance and
4 administration."

5 SECTION 10. Section 36-1A-15 NMSA 1978 (being Laws 1991,
6 Chapter 175, Section 15) is amended to read:

7 "36-1A-15. FEDERAL FUNDS AND ASSISTANCE.--When the
8 provisions of any laws of the United States or any rule, order
9 or regulation of any federal agency or authority providing
10 federal funds for use in the state, either directly or
11 indirectly or as a grant-in-aid, to be matched or otherwise,
12 impose as a condition for the receipt of such funds other or
13 higher personnel standards or different classifications than
14 are provided for by the District Attorney Personnel and
15 Compensation Act, the board shall recommend to the district
16 attorneys and the attorney general adoption of rules [~~and~~
17 ~~regulations~~] to meet the requirements of such laws, rules,
18 order or regulation."