

2007 New Mexico Laws Ch. 206 (S.B. 479)

NEW MEXICO 2007 SESSION LAWS  
FIRST REGULAR SESSION OF THE 48TH LEGISLATURE (2007)  
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Ch. 206  
S.B. No. 479

**STATE GOVERNMENT—  
GOVERNMENT DISPUTE RESOLUTION ACT—  
OFFICE OF ALTERNATIVE DISPUTE PREVENTION AND RESOLUTION BUREAU--  
POWERS AND DUTIES—  
ADVISORY COUNCILS**

**AN ACT RELATING TO STATE GOVERNMENT; AMENDING AND CHANGING THE  
NAME OF THE GOVERNMENTAL DISPUTE RESOLUTION ACT; ESTABLISHING A  
BUREAU KNOWN AS THE OFFICE OF ALTERNATIVE DISPUTE PREVENTION AND  
RESOLUTION IN THE RISK MANAGEMENT DIVISION OF THE GENERAL SERVICES  
DEPARTMENT; PRESCRIBING THE DUTIES AND POWERS OF THE OFFICE;  
CREATING AN ADVISORY COUNCIL; MAKING AN APPROPRIATION.**

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

Chapter 12, Article 8A NMSA 1978 may be cited as the "Governmental Dispute Prevention and 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 Prevention and Resolution Act:

- A. "agency" means the state and its agencies, departments, boards, instrumentalities or institutions that are insured by the division;
- B. "alternative dispute resolution" means a process other than litigation used to prevent or resolve disputes, including mediation, facilitation, regulatory negotiation, settlement conferences, binding and nonbinding arbitration, fact-finding, conciliation, early neutral evaluation and policy dialogues;
- C. "council" means the alternative dispute prevention and resolution advisory council;
- D. "department" means the general services department;
- E. "division" means the risk management division of the department;
- F. "interested party" means a person having or anticipating a dispute with any agency, or

a representative of that person;

G. "neutral party" means a person who is trained to provide services as a mediator, arbitrator, facilitator, fact-finder or conciliator who aids parties to prevent or resolve disputes;

H. "office" means the bureau known as the office of alternative dispute prevention and resolution in the division; and

I. "public facilitation" means collaboration with identified stakeholders concerning public policy issues, including policy dialogues and other techniques to seek consensus, reconcile differences or prevent disputes from arising in the development or implementation of public administration issues.

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

§ 12-8A-3. Alternative dispute resolution; authorization; procedures; agency coordinators

A. An agency shall provide interested parties with access to alternative dispute resolution procedures to prevent or resolve any dispute, issue or controversy involving any of the agency's operations, policies, programs or functions, including formal and informal adjudications, rulemakings, enforcement actions, permitting, certifications, licensing, policy development and contract administration. Alternative dispute resolution procedures are voluntary and may be initiated at the request of the agency or an interested party to a dispute. Either party may decline to participate in a requested or offered alternative dispute resolution activity.

B. An agency that participates in alternative dispute resolution shall develop a written agreement to be signed by interested parties that:

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

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

(3) contains provisions for alternative dispute resolution that conform with rules promulgated by the division; and

(4) sets forth how costs and expenses of the procedure chosen shall be equitably apportioned among the parties.

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

D. The administrative head of an agency may designate an employee as the alternative dispute resolution coordinator for that agency. The coordinator shall:

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

(2) analyze the agency's enabling statutes and rules to determine whether they contain impediments to the use of alternative dispute resolution or inconsistencies with rules promulgated by the office and suggest any modifications;

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

(4) arrange for training of agency staff in alternative dispute resolution;

(5) respond to inquiries from the office or council concerning the agency's use of alternative dispute resolution;

(6) make recommendations to the office and council concerning development and implementation of rules, standards and educational materials;

(7) serve as the agency's liaison with the office and the council; and

(8) provide information about the office's rules and the agency's alternative dispute

resolution procedures to the agency's staff and to the public.

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

§ 12-8A-4. Agency budgets; contracts for services

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

B. An agency may contract with another agency or with a private entity for any service necessary to meet the objectives of the Governmental Dispute Prevention and Resolution Act.

Section 5. Section 12-8A-5 NMSA 1978 (being Laws 2000, Chapter 65, Section 5) is amended to read:

§ 12-8A-5. Effect on other laws

Nothing in the Governmental Dispute Prevention and Resolution Act and rules, agreements and procedures developed pursuant to that act:

- A. limits other dispute prevention or resolution procedures available to an agency;
- B. denies a person a right granted under federal or other state law, including a right to an administrative or judicial hearing;
- C. waives immunity from suit or affects a waiver of immunity from suit contained in any other law;
- D. waives immunity granted under the eleventh amendment to the constitution of the United States;
- E. authorizes or prohibits binding arbitration as a method of alternative dispute resolution when mutually agreed to in writing by the interested parties;
- F. authorizes or requires an agency to take any action that is inconsistent or contrary to any law or rule;
- G. authorizes or requires any meeting, otherwise required to be open to the public, to be closed;
- H. authorizes or requires any record, otherwise open to public inspection, to be sealed; or
- I. shall be interpreted to create an additional layer of administrative process or to discourage or impede the use of alternative dispute resolution.

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

"ALTERNATIVE DISPUTE PREVENTION AND RESOLUTION ADVISORY COUNCIL CREATED.-

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A. The "alternative dispute prevention and resolution advisory council" is created in the division. The council consists of nine voting members as follows:

- (1) the secretary of general services;
- (2) the secretary of finance and administration;
- (3) the director of the state personnel office;
- (4) the superintendent of regulation and licensing;

- (5) the cabinet secretary or agency head of four other executive branch agencies to be appointed by the governor from among the ten agencies with the highest occurrence of public liability claims per authorized number of staff, no more than two of whom are cabinet secretaries; and
  - (6) the director of the division, who shall serve as chair of the council.
- B. An agency head may designate a representative to serve on the council.
- C. The council shall meet at least twice each year."

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

"ALTERNATIVE DISPUTE PREVENTION AND RESOLUTION ADVISORY COUNCIL--DUTIES.--

The council shall:

- A. review information about the use of alternative dispute resolution, including referrals, and make recommendations to the office to improve the effectiveness of alternative dispute resolution programs;
- B. develop strategies to encourage and expand the use of public facilitation in government operations;
- C. recommend to the division appropriate training standards and schedules for neutral parties and agency managers and supervisors;
- D. review and recommend standards and rules to the division to foster participation in alternative dispute resolution and minimize conflict in the discussion of issues under consideration by interested parties; and
- E. present an annual report to the department, the governor and the legislature by December 1 of each year on the use, cost and success of alternative dispute resolution programs."

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

"OFFICE OF ALTERNATIVE DISPUTE PREVENTION AND RESOLUTION--CREATED--  
POWERS-- DUTIES.--

- A. The "office of alternative dispute prevention and resolution" is created as a bureau of the division.
- B. In order to promote alternative dispute resolution, the office shall:
  - (1) organize and manage alternative dispute resolution programs for agencies, employees, vendors, businesses regulated by governmental entities and other interested parties;
  - (2) coordinate the use of neutral parties to facilitate alternative dispute resolution for interested parties and training for agency staff;
  - (3) implement development and use of alternative dispute resolution strategies;
  - (4) provide staff support for the council;
  - (5) maintain information and educate government officials about training and use of alternative dispute resolution and referrals; and
  - (6) prepare an annual report for review and presentation by the council on the use, cost and success of alternative dispute resolution programs."

Section 9. APPROPRIATION.--One hundred eighty-five thousand dollars (\$185,000) is appropriated from the public liability fund to the risk management division of the general services department for expenditure in fiscal year 2008 for three full-time employees for

the office of alternative dispute prevention and resolution for the purpose of implementing the Governmental Dispute Prevention and Resolution Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2008 shall revert to the public liability fund.

Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2007.

Approved April 2, 2007.

NM LEGIS 206 (2007)