

<b>LFC Requester:</b>	<b>Caroline Malone</b>
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:

Original        Amendment      
Correction        Substitute   

Date Prepared: 2/5/15

Bill No: HB 292

Sponsor: Rep. Andy Nuñez

Agency/Code: Attorney General's Office

Person Writing Analysis: Betsy Glenn

Short Title: Administrative Hearings Act

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

**BILL SUMMARY**

Synopsis:

HB 292 establishes an Administrative Hearings Office that is administratively attached to the Department of Finance and Administration. The Office is headed by a chief hearing officer who is appointed by the governor with the advice and consent of the senate for a six-year term. The chief hearing officer must be a licensed NM attorney with knowledge of tax law. The chief hearing officer may be removed only for cause.

HB 292 transfers from the Hearings Bureau of the Taxation and Revenue Department (“TRD”) to the Administrative Hearings Office responsibility for conducting hearings on tax protests and property tax protests, hearings on license denials or the failure to allow or deny a driver’s license, permit, placard or registration under the Motor Vehicle Code, and driver’s license revocation hearings under the Implied Consent Act. HB 292 includes requirements for the conduct of administrative hearings and prohibits a hearing officer from formulating tax policy and engaging in ex parte communications concerning the substantive issues of matters that have been protested.

HB 292 makes corresponding amendments to the Tax Administration Act, Property Tax Administration Act and Motor Vehicle Code and clarifies certain provisions of the Tax Administration Act.

HB 292 amends the statutes governing TRD’s authority to issue regulations, tax rulings, orders and instructions to allow (1) an interested person to petition the secretary to request the promulgation, amendment or repeal of a rule and (2) a person who is adversely affected by a rule or whose petition to promulgate, amend or repeal a rule has been denied to appeal to the court of appeals. The bill allows an appellant to request a stay of the rule or action of the secretary that is the subject of the appeal.

**FISCAL IMPLICATIONS**

**SIGNIFICANT ISSUES**

**PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

Without additional safeguards or limitations, HB 292's provisions allowing any interested person to request the promulgation, amendment or repeal of rules and creating the right to appeal a rule or the secretary's denial of a request to promulgate, amend or repeal a rule have the potential to increase the workload of TRD and the Court of Appeals significantly. The right to appeal in conjunction with the authority of an appellant to obtain a stay of the rule or secretary's denial of a request to promulgate, amend or repeal a rule may significantly interfere with TRD's ability to promulgate effective rules and operate efficiently.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

### **TECHNICAL ISSUES**

Section 1. The title of the law enacted by the bill - the "Administrative Hearings Office Act" – is a bit misleading since the only hearings covered by the act relate to matters administered by the Taxation and Revenue Department.

Section 7. The definition of "hearing officer" is "a person who has been designated by the chief hearing officer ... and who is: (1) the chief hearing officer...." The definition also includes employees and contractors of the administrative hearings office. The quoted part of the definition is confusing because it suggests that a hearing officer is both designated by the chief hearing officer and the chief hearing officer. The definition might clearer if it stated that "hearing officer" means "the chief hearing officer or a person who has been designated by the chief hearing officer ... and who is" an employee or contractor of the administrative hearings office.

Section 20. The bill's amendments to Section 9-11-6.2 refer to "rules," while the current sections of the law refer to "regulations." To avoid any ambiguity, the sections added by the bill might be amended to be consistent with the existing sections.

### **OTHER SUBSTANTIVE ISSUES**

### **ALTERNATIVES**

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo. Hearings will continue to be conducted by the Hearings Bureau and there will be no private right to request the promulgation, amendment or repeal of a rule or to appeal the denial of a request to promulgate, amend or repeal a rule.

### **AMENDMENTS**

See discussion above under "Technical Issues."