

104TH CONGRESS
2D SESSION

H. R. 4194

To reauthorize alternative means of dispute resolution in the Federal administrative process, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 1996

Mr. HYDE (for himself, Mr. GEKAS, and Mr. REED) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To reauthorize alternative means of dispute resolution in the Federal administrative process, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Administrative Dispute
5 Resolution Act of 1996”.

6 **SEC. 2. AMENDMENT TO DEFINITIONS.**

7 Section 571 of title 5, United States Code, is amend-
8 ed—

9 (1) in paragraph (3)—

1 (A) by striking “, in lieu of an adjudication
2 as defined in section 551(7) of this title,”;

3 (B) by striking “settlement negotiations,”;
4 and

5 (C) by striking “and arbitration” and in-
6 serting “arbitration, and use of ombuds”; and
7 (2) in paragraph (8)—

8 (A) in subparagraph (B) by striking “deci-
9 sion,” and inserting “decision;”; and

10 (B) by striking the matter following sub-
11 paragraph (B).

12 **SEC. 3. AMENDMENTS TO CONFIDENTIALITY PROVISIONS.**

13 (a) **LIMITATION OF CONFIDENTIALITY APPLICATION**
14 **TO COMMUNICATION.**—Subsections (a) and (b) of section
15 574 of title 5, United States Code, are each amended in
16 the matter before paragraph (1) by striking “any informa-
17 tion concerning”.

18 (b) **DISPUTE RESOLUTION COMMUNICATION.**—Sec-
19 tion 574(b)(7) of title 5, United States Code, is amended
20 to read as follows:

21 “(7) except for dispute resolution communica-
22 tions generated by the neutral, the dispute resolution
23 communication was provided to or was available to
24 all parties to the dispute resolution proceeding.”.

1 (c) ALTERNATIVE CONFIDENTIALITY PROCE-
2 DURES.—Section 574(d) of title 5, United States Code,
3 is amended—

4 (1) by inserting “(1)” after “(d)”; and

5 (2) by adding at the end thereof the following
6 new paragraph:

7 “(2) To qualify for the exemption established under
8 subsection (j), an alternative confidential procedure under
9 this subsection may not provide for less disclosure than
10 the confidential procedures otherwise provided under this
11 section.”.

12 (d) EXEMPTION FROM DISCLOSURE BY STATUTE.—
13 Section 574 of title 5, United States Code, is amended
14 by amending subsection (j) to read as follows:

15 “(j) A dispute resolution communication which is be-
16 tween a neutral and a party and which may not be dis-
17 closed under this section shall also be exempt from disclo-
18 sure under section 552(b)(3).”.

19 **SEC. 4. AMENDMENT TO REFLECT THE CLOSURE OF THE**
20 **ADMINISTRATIVE CONFERENCE.**

21 (a) PROMOTION OF ADMINISTRATIVE DISPUTE RES-
22 OLUTIONS.—Section 3(a)(1) of the Administrative Dis-
23 pute Resolution Act (5 U.S.C. 571 note; Public Law 101-
24 552; 104 Stat. 2736) is amended to read as follows:

1 “(1) consult with the agency designated by, or
2 the interagency committee designated or established
3 by, the President under section 573 of title 5, Unit-
4 ed States Code, to facilitate and encourage agency
5 use of alternative dispute resolution under sub-
6 chapter IV of chapter 5 of such title; and”.

7 (b) COMPILATION OF INFORMATION.—

8 (1) IN GENERAL.—Section 582 of title 5,
9 United States Code, is repealed.

10 (2) TECHNICAL AND CONFORMING AMEND-
11 MENT.—The table of sections for chapter 5 of title
12 5, United States Code, is amended by striking the
13 item relating to section 582.

14 (c) FEDERAL MEDIATION AND CONCILIATION SERV-
15 ICE.—Section 203(f) of the Labor Management Relations
16 Act, 1947 (29 U.S.C. 173(f)) is amended by striking “the
17 Administrative Conference of the United States and other
18 agencies” and inserting “the agency designated by, or the
19 interagency committee designated or established by, the
20 President under section 573 of title 5, United States
21 Code,”.

22 **SEC. 5. AMENDMENTS TO SUPPORT SERVICES PROVISION.**

23 Section 583 of title 5, United States Code, is amend-
24 ed by inserting “State, local, and tribal governments,”
25 after “other Federal agencies,”.

1 **SEC. 6. AMENDMENTS TO THE CONTRACT DISPUTES ACT.**

2 Section 6 of the Contract Disputes Act of 1978 (41
3 U.S.C. 605) is amended—

4 (1) in subsection (d) by striking the second sen-
5 tence and inserting: “The contractor shall certify the
6 claim when required to do so as provided under sub-
7 section (c)(1) or as otherwise required by law.”; and

8 (2) in subsection (e) by striking the first sen-
9 tence.

10 **SEC. 7. AMENDMENTS ON ACQUIRING NEUTRALS.**

11 (a) **EXPEDITED HIRING OF NEUTRALS.—**

12 (1) **COMPETITIVE REQUIREMENTS IN DEFENSE**
13 **AGENCY CONTRACTS.—**Section 2304(c)(3)(C) of title
14 10, United States Code, is amended by striking
15 “agency, or” and inserting “agency, or to procure
16 the services of an expert or neutral for use”.

17 (2) **COMPETITIVE REQUIREMENTS IN FEDERAL**
18 **CONTRACTS.—**Section 303(c)(3)(C) of the Federal
19 Property and Administrative Services Act of 1949
20 (41 U.S.C. 253(c)(3)(C)), is amended by striking
21 “agency, or” and inserting “agency, or to procure
22 the services of an expert or neutral for use”.

23 (b) **REFERENCES TO THE ADMINISTRATIVE CON-**
24 **FERENCE OF THE UNITED STATES.—**Section 573 of title
25 5, United States Code, is amended—

1 (1) by striking subsection (c) and inserting the
2 following:

3 “(c) The President shall designate an agency or des-
4 ignate or establish an interagency committee to facilitate
5 and encourage agency use of dispute resolution under this
6 subchapter. Such agency or interagency committee, in con-
7 sultation with other appropriate Federal agencies and pro-
8 fessional organizations experienced in matters concerning
9 dispute resolution, shall—

10 “(1) encourage and facilitate agency use of al-
11 ternative means of dispute resolution; and

12 “(2) develop procedures that permit agencies to
13 obtain the services of neutrals on an expedited
14 basis.”; and

15 (2) in subsection (e) by striking “on a roster es-
16 tablished under subsection (c)(2) or a roster main-
17 tained by other public or private organizations, or
18 individual”.

19 **SEC. 8. ARBITRATION AWARDS AND JUDICIAL REVIEW.**

20 (a) **ARBITRATION AWARDS.**—Section 580 of title 5,
21 United States Code, is amended—

22 (1) by striking subsections (c), (f), and (g); and

23 (2) by redesignating subsections (d) and (e) as
24 subsections (c) and (d), respectively.

1 (b) JUDICIAL AWARDS.—Section 581(d) of title 5,
2 United States Code, is amended—

3 (1) by striking “(1)” after “(b)”; and

4 (2) by striking paragraph (2).

5 (c) AUTHORIZATION OF ARBITRATION.—Section 575
6 of title 5, United States Code, is amended—

7 (1) in subsection (a)(2), by striking “Any” and
8 inserting “The”;

9 (2) in subsection (a)(2), by adding at the end
10 the following: “Each such arbitration agreement
11 shall specify a maximum award that may be issued
12 by the arbitrator and may specify other conditions
13 limiting the range of possible outcomes.”;

14 (3) in subsection (b)—

15 (A) by striking “may offer to use arbitra-
16 tion for the resolution of issues in controversy,
17 if” and inserting “shall not offer to use arbitra-
18 tion for the resolution of issues in controversy
19 unless”; and

20 (B) by striking in paragraph (1) “has au-
21 thority” and inserting “would otherwise have
22 authority”; and

23 (4) by adding at the end the following:

24 “(c) Prior to using binding arbitration under this
25 subchapter, the head of an agency, in consultation with

1 the Attorney General and after taking into account the
2 factors in section 572(b), shall issue guidance on the ap-
3 propriate use of binding arbitration and when an officer
4 or employee of the agency has authority to settle an issue
5 in controversy through binding arbitration.”.

6 **SEC. 9. PERMANENT AUTHORIZATION OF THE ALTER-**
7 **NATIVE DISPUTE RESOLUTION PROVISIONS**
8 **OF TITLE 5, UNITED STATES CODE.**

9 The Administrative Dispute Resolution Act (Public
10 Law 101–552; 104 Stat. 2747; 5 U.S.C. 571 note) is
11 amended by striking section 11.

12 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

13 (a) IN GENERAL.—Subchapter IV of title 5, United
14 States Code, is amended by adding at the end thereof the
15 following new section:

16 **“§ 584. Authorization of appropriations**

17 “There are authorized to be appropriated such sums
18 as may be necessary to carry out the purposes of this sub-
19 chapter.”.

20 (b) TECHNICAL AND CONFORMING AMENDMENT.—
21 The table of sections for chapter 5 of title 5, United States
22 Code, is amended by inserting after the item relating to
23 section 583 the following:

“584. Authorization of appropriations.”.

1 **SEC. 11. REAUTHORIZATION OF NEGOTIATED RULEMAKING**
2 **ACT OF 1990.**

3 (a) PERMANENT REAUTHORIZATION.—Section 5 of
4 the Negotiated Rulemaking Act of 1990 (Public Law 101–
5 648; 5 U.S.C. 561 note) is repealed.

6 (b) CLOSURE OF ADMINISTRATIVE CONFERENCE.—

7 (1) IN GENERAL.—Section 569 of title 5, Unit-
8 ed States Code, is amended—

9 (A) by amending the section heading to
10 read as follows:

11 **“§ 569. Encouraging negotiated rulemaking”; and**

12 (B) by striking subsections (a) through (g)
13 and inserting the following:

14 “(a) The President shall designate an agency or des-
15 ignate or establish an interagency committee to facilitate
16 and encourage agency use of negotiated rulemaking. An
17 agency that is considering, planning, or conducting a ne-
18 gotiated rulemaking may consult with such agency or com-
19 mittee for information and assistance.

20 “(b) To carry out the purposes of this subchapter,
21 an agency planning or conducting a negotiated rulemaking
22 may accept, hold, administer, and utilize gifts, devises,
23 and bequests of property, both real and personal if that
24 agency’s acceptance and use of such gifts, devises, or be-
25 quests do not create a conflict of interest. Gifts and be-
26 quests of money and proceeds from sales of other property

1 received as gifts, devises, or bequests shall be deposited
2 in the Treasury and shall be disbursed upon the order of
3 the head of such agency. Property accepted pursuant to
4 this section, and the proceeds thereof, shall be used as
5 nearly as possible in accordance with the terms of the
6 gifts, devises, or bequests.”.

7 (2) TECHNICAL AND CONFORMING AMEND-
8 MENT.—The table of sections for chapter 5 of title
9 5, United States Code, is amended by striking the
10 item relating to section 569 and inserting the follow-
11 ing:

“569. Encouraging negotiated rulemaking.”.

12 (c) EXPEDITED HIRING OF CONVENORS AND
13 FACILITATORS.—

14 (1) DEFENSE AGENCY CONTRACTS.—Section
15 2304(e)(3)(C) of title 10, United States Code, is
16 amended by inserting “or negotiated rulemaking”
17 after “alternative dispute resolution”.

18 (2) FEDERAL CONTRACTS.—Section
19 303(c)(3)(C) of the Federal Property and Adminis-
20 trative Services Act of 1949 (41 U.S.C.
21 253(c)(3)(C)), is amended by inserting “or nego-
22 tiated rulemaking” after “alternative dispute
23 resolution”.

24 (d) AUTHORIZATION OF APPROPRIATIONS.—

1 (1) IN GENERAL.—Subchapter III of title 5,
2 United States Code, is amended by adding at the
3 end thereof the following new section:

4 **“§ 570a. Authorization of appropriations**

5 “There are authorized to be appropriated such sums
6 as may be necessary to carry out the purposes of this sub-
7 chapter.”.

8 (2) TECHNICAL AND CONFORMING AMEND-
9 MENT.—The table of sections for chapter 5 of title
10 5, United States Code, is amended by inserting after
11 the item relating to section 570 the following:

“570a. Authorization of appropriations.”.

12 (e) NEGOTIATED RULEMAKING COMMITTEES.—The
13 Director of the Office of Management and Budget shall—

14 (1) within 180 days of the date of the enact-
15 ment of this Act, take appropriate action to expedite
16 the establishment of negotiated rulemaking commit-
17 tees and committees established to resolve disputes
18 under the Administrative Dispute Resolution Act, in-
19 cluding, with respect to negotiated rulemaking com-
20 mittees, eliminating any redundant administrative
21 requirements related to filing a committee charter
22 under section 9 of the Federal Advisory Committee
23 Act (5 U.S.C. App.) and providing public notice of
24 such committee under section 564 of title 5, United
25 States Code; and

1 (2) within one year of the date of the enact-
2 ment of this Act, submit recommendations to Con-
3 gress for any necessary legislative changes.

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