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## FISCAL IMPACT REPORT

SPONSOR: Martinez DATE TYPED: 03/05/01 HB 588/aHGUAC  
 SHORT TITLE: Governmental Dispute Resolution Act SB \_\_\_\_\_  
 ANALYST: Rael

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
	\$ 60.0			Nonrecurring	General Fund
		Indeterminate See Narrative		Recurring	Alternative Dispute Resolution Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 551

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
	Indeterminate		Recurring	New Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)  
 Attorney General's Office (AGO)  
 Department of Agriculture (DOA)  
 Department of Public Safety (DPS)  
 Division of Vocational Rehabilitation (DVR)  
 Energy, Minerals and Natural Resources Department (EMNRD)  
 Gaming Control Board (GCB)  
 General Services Department (GSD)  
 New Mexico Environment Department (NMED)  
 New Mexico State Fair (NMSF)  
 Public Regulatory Commission (PRC)  
 State Agency on Aging (SAA)  
 State Highway and Transportation Department (SHTD)  
 State Personnel Office (SPO)

Tourism Department (TD)

**SUMMARY**

Synopsis of HGUAC Amendment

The House Government and Urban Affairs Committee Amendment:

1. Adds “issues or controversies” to the reasons to use alternative dispute resolution to be consistent with other language in the bill.
2. Allows an “employee of an agency” to be a neutral party assigned to resolve disputes.
3. Removes the requirement for an agency to first offer alternative dispute resolution, and instead allows agencies to develop procedures for such resolution, and for the process to be voluntary.
4. Allows the agency to contract with another agency as well as with the Office of Dispute Resolution or a private entity.
5. Allows the Office of Dispute Resolution to adopt guidelines, rather than rules, to carry out the provisions of the Act.

Synopsis of Original Bill

The Governmental Dispute Resolution Act amends the Governmental Dispute Resolution Act, NMSA 12-8A-1 et. seq. by requiring each agency to offer alternative dispute resolution (ADR) options for agency conflicts, and administrative functions such as rule making, enforcement actions and licensing procedures. The Act also creates an Office of Dispute Resolution, and ADR Fund and an ADR Council. The bill provides for the following additions to the Act:

**Creates ADR council.** A new section is added to the Act to create a seven (7) member advisory council (three (3) members appointed by the governor, one (1) by the chief justice of the supreme court, one (1) by the president pro tempore of the senate, one (1) by the speaker of the house of representatives and one (1) by the attorney general) to provide advice for the coordination, funding, and evaluation of dispute resolution and conflict management programs, education, training and research in the state. Members of the Council are not paid, but receive per diem. Terms are 4 years each with staggered initial terms to ensure that the terms of the council members end at various times.

**Creates an Office of Dispute Resolution.** A new section is added to the Act to create an Office of Dispute Resolution under the Department of Finance and Administration. There is a full time director position created to coordinate the work of the department. The office facilitates the resolution of disputes through ADR techniques, helps to develop the processes, establishes standards for selecting people to act as neutrals, conducts educational programs, and assists agencies as they create their own projects. The Office may establish fees or assessments for services, apply for grants, establish advisory committees and adopt rules as needed. The director also provides an annual report to the governor, chief justice of the supreme court and chief clerks of the house of representatives and the senate.

**Creates an ADR fund.** The Act provides for an ADR Fund to hold funds provided to the Office of Dispute Resolution. This Fund shall not revert to any other fund but shall remain to carry out the

purposes of the Act. \$60,000 is appropriated for expenditure in fiscal year 2002 for costs incurred incidental to the start-up of the office.

**Requirements for Agency Action.** The present act makes the creation of ADR alternatives optional for each agency. The bill amends provisions of the existing act to require each agency to offer ADR to resolve disputes, issues or controversies involving agency operations, programs or functions, including formal and informal adjudications, rule makings, enforcement actions, permitting, certifications, licensing, policy development and contract administration. After the initial offer by the agency of ADR options, the ADR options are voluntary.

Under the existing Act, each agency presently has an obligation, regardless of size, to appoint an ADR coordinator. The Act changes the requirement to agencies with 25 people or more.

#### Significant Issues

If the broad ADR provisions are implemented by state agencies and are successful, the impact on the courts and the Personnel Board could be substantial. Because of the broad definition of ADR in the Act (including not only disputes, but rule making, enforcement actions, permitting, and licensing provisions), there could be a large reduction of litigation if the program is successful in eliminating cases that would eventually end up in court. It could lead to improved management/employee relations and reduced legal costs.

#### **PERFORMANCE IMPLICATIONS**

Effective use of ADR can have enormous beneficial effects on agency performance. This bill will foster additional use of ADR in many agencies, which will create improved work environments for state employees because more conflicts between state employees will be effectively resolved. In addition, ADR can facilitate resolution of issues between agencies and the public, other agencies, and industries affected by agency actions. Whenever people “get along” better, performance improves.

#### **FISCAL IMPLICATIONS**

The appropriation of \$60.0 contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY2002 shall revert to the general fund.

The Alternative Dispute Resolution Fund is created to consist of all appropriations and other revenue. Money from the Fund is appropriated for the Office of Dispute Resolution for expenditure. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

In general, since the costs for ADR have yet to be determined, it is difficult to estimate the additional cost on agencies’ budgets. However, it is presumed that since ADR seeks to prevent costly litigation, the fees to the ADR Fund would come from the funds generally used for litigation costs.

GSD believes that funding of the Office should be made by equal contribution from all covered agencies, or proportionally by number of people employed by each covered agency.

#### **ADMINISTRATIVE IMPLICATIONS**

Appointing the "alternative dispute resolution coordinator" created by § 12-8A-3(D) may require

redefining job duties and funding the position.

### **TECHNICAL ISSUES**

6. Define “neutral” to include “experts and consultants” in § 12-8A-2(F) or, strike the terms “consultant or expert” in § 12-8A-3(B)(1).
7. On page 3, line 4, after the period, insert: “This provision shall not apply to any claim against an agency or department of the state of New Mexico or its political subdivisions which are covered by the New Mexico Tort Claims Act, the Constitution of the United States or state of New Mexico, where the plaintiff is seeking monetary damages or injunctive relief. Nothing in this Act shall impair or conflict with the statutes and regulations concerning the Risk Management Division of the General Services Department (NMSA ’78 41.4-1 – 41.4-27).”
8. Page 3, lines 9-10 delete “An agency that chooses to use ” and insert “Each agency required to use”.
9. Page 5, line 2, allow for contracting with another agency, or another political subdivision.
10. On page 7, lines 20 through 22, delete the sentence “The director shall be subject to the provisions of the Personnel Act.” The Personnel Board reports that this is in violation of the intent of the Personnel Act and would be the only classified position in state government whose incumbent must be approved by the Governor.

### **OTHER SUBSTANTIVE ISSUES**

- c Most agencies are confused about whether ADR is mandatory or voluntary, and under what circumstances it is appropriate.
- c In general, ADR is intended to be a cost-effective problem solving mechanism that is particularly appropriate for water and land issues and other public policy concerns. The language and intent should be as inclusive as possible to allow for alternative dispute resolution with multiple parties (including tribes, counties and cities) under multiple circumstances.
- c GSD believes that it would be more logical to “attach” the Office of Dispute Resolution to the AGO, AOC or GSD instead of DFA because dispute resolution already exists as part of the mission and operational routine of these agencies.

### **POSSIBLE QUESTIONS**

It is unclear whether the definition of “agency” in section 12-8A-2, in particular “political subdivisions”, is intended to refer to cities and counties.

FAR/sb