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SENATE BILL 262

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY
Linda M. Lopez

AN ACT

RELATING TO GOVERNMENT; ENACTING THE GOVERNMENTAL DISPUTE
RESOLUTION ACT; AUTHORIZING AGENCIES TO RESOLVE DISPUTES
THROUGH ALTERNATIVE DISPUTE RESOLUTION; MAKING AN
APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Governmental Dispute Resolution Act".

Section 2. DEFINITIONS.--As used in the Governmental
Dispute Resolution Act:

A. "agency" means the state, political
subdivisions of the state and any of their branches,
agencies, departments, boards, instrumentalities or
institutions;

B. "alternative dispute resolution" means a
process other than litigation used to resolve disputes,

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1 including mediation, facilitation, regulatory negotiation,
2 fact-finding, conciliation, early neutral evaluation and
3 policy dialogues; and

4 C. "neutral" means a person who provides services
5 as a mediator, fact-finder or conciliator or who otherwise
6 aids parties to resolve disputes.

7 Section 3. ALTERNATIVE DISPUTE RESOLUTION--AUTHORIZATION--
8 -PROCEDURES--AGENCY COORDINATORS.--

9 A. An agency may use an alternative dispute
10 resolution procedure to resolve any dispute, issue or
11 controversy involving any of the agency's operations, programs
12 or functions, including formal and informal adjudications,
13 rulemakings, enforcement actions, permitting, certifications,
14 licensing, policy development and contract administration.
15 Alternative dispute resolution procedures are voluntary and
16 may be used at the discretion of the agency or at the request
17 of an interested party to a dispute.

18 B. An agency that chooses to use an alternative
19 dispute resolution process shall develop an agreement with
20 interested parties that:

21 (1) provides for the appointment of neutrals,
22 consultants or experts agreed upon by all parties and serving
23 at the will of all parties. A neutral, consultant or expert
24 shall have no official, financial or personal conflict of
25 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

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1 to serve;

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

7 (3) establishes rules for the alternative
8 dispute resolution procedures; and

9 (4) sets forth how costs and expenses shall
10 be equitably apportioned among the parties.

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

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

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

21 (2) analyze the agency's enabling statutes
22 and rules to determine whether they contain impediments to the
23 use of alternative dispute resolution procedures and suggest
24 any modifications;

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

(4) arrange for training of agency staff in

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1 alternative dispute resolution procedures; and

2 (5) provide information about the agency's
3 alternative dispute resolution procedures to the agency's
4 staff and to the public.

5 Section 4. AGENCY BUDGETS--CONTRACTS FOR SERVICES.--

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

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

19 Section 5. EFFECT ON OTHER LAWS.--Nothing in the
20 Governmental Dispute Resolution Act and agreements and
21 procedures developed pursuant to that act:

22 A. limits other dispute resolution procedures
23 available to an agency;

24 B. denies a person a right granted under federal or
25 other state law, including a right to an administrative or
judicial hearing;

C. waives immunity from suit or affects a waiver of

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1 immunity from suit contained in any other law;

2 D. waives immunity granted under the eleventh
3 amendment to the constitution of the United States;

4 E. authorizes binding arbitration as a method of
5 alternative dispute resolution;

6 F. authorizes or requires an agency to take any
7 action that is inconsistent or contrary to any law or rule;

8 G. authorizes or requires any meeting, otherwise
9 required to be open to the public, to be closed; or

10 H. authorizes or requires any record, otherwise
11 open to public inspection, to be sealed.

12 Section 6. APPROPRIATION.--Sixty thousand dollars
13 (\$60,000) is appropriated from the general fund to the local
14 government division of the department of finance and
15 administration for expenditure in fiscal year 2001 for the
16 purpose of assisting agencies in meeting the objectives of the
17 Governmental Dispute Resolution Act by training employees that
18 are designated as alternative dispute resolution coordinators
19 under that act and by utilizing alternative dispute resolution
20 procedures pursuant to existing law. Any unexpended or
21 unencumbered balance remaining at the end of fiscal year 2001
22 shall revert to the general fund.