

In the Senate of the United States,

June 12, 1996.

Resolved, That the bill from the House of Representatives (H.R. 2977) entitled “An Act to reauthorize alternative means of dispute resolution in the Federal administrative process, and for other purposes.”, do pass with the following

AMENDMENTS:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Administrative Dispute*
3 *Resolution Act of 1995”.*

4 ***SEC. 2. AMENDMENT TO DEFINITIONS.***

5 *Section 571 of title 5, United States Code, is amend-*
6 *ed—*

7 *(1) in paragraph (3)—*

8 *(A) by striking out “settlement negotia-*
9 *tions,”; and*

1 (B) by striking out “and arbitration” and
 2 inserting in lieu thereof “use of ombuds, and
 3 binding or nonbinding arbitration,”; and
 4 (2) in paragraph (8)—

5 (A) in subparagraph (B) by striking out
 6 “decision,” and inserting in lieu thereof “dec-
 7 sion.”; and

8 (B) by striking out the matter following
 9 subparagraph (B).

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

11 (a) *TERMINATION OF AVAILABILITY EXEMPTION TO*
 12 *CONFIDENTIALITY.*—Section 574(b) of title 5, United States
 13 *Code, is amended—*

14 (1) in paragraph (5) by adding “or” at the end
 15 thereof;

16 (2) in paragraph (6) by striking out “; or” and
 17 inserting in lieu thereof a period; and

18 (3) by striking out paragraph (7).

19 (b) *LIMITATION OF CONFIDENTIALITY APPLICATION TO*
 20 *COMMUNICATION.*—Section 574 of title 5, United States
 21 *Code, is amended—*

22 (1) in subsection (a) in the matter before para-
 23 graph (1) by striking out “any information concern-
 24 ing”; and

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

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

18 “(j) *A dispute resolution communication which is gen-*
19 *erated by or provided to an agency or neutral, and which*
20 *may not be disclosed under this section, shall also be exempt*
21 *from disclosure under section 552(b)(3).”.*

24 (a) PROMOTION OF ADMINISTRATIVE DISPUTE RESO-
25 LUTIONS.—Section 3(a)(1) of the Administrative Dispute

1 *Resolution Act (5 U.S.C. 581 note; Public Law 101–552;*
 2 *104 Stat. 2736) is amended by striking out “the Adminis-*
 3 *trative Conference of the United States and”.*

4 (b) *COMPILATION OF INFORMATION.*—

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

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

11 (c) *FEDERAL MEDIATION AND CONCILIATION SERV-*
 12 *ICE.*—Section 203(f) of the *Labor Management Relations*
 13 *Act, 1947 (29 U.S.C. 173(f)) is amended by striking out*
 14 *“the Administrative Conference of the United States and”.*

15 **SEC. 5. AMENDMENTS TO SUPPORT SERVICE PROVISION.**

16 Section 583 of title 5, *United States Code, is amended*
 17 *by inserting “State, local, and tribal governments,” after*
 18 *“other Federal agencies,”.*

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

20 Section 6 of the *Contract Disputes Act of 1978 (41*
 21 *U.S.C. 605) is amended—*

22 (1) *in subsection (d) by striking out the second*
 23 *sentence and inserting in lieu thereof: “The contractor*
 24 *shall certify the claim when required to do so as pro-*

1 *vided under subsection (c)(1) or as otherwise required*
 2 *by law.”; and*

3 *(2) in subsection (e) by striking out the first sen-*
 4 *tence.*

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

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

7 *(1) COMPETITIVE REQUIREMENTS IN DEFENSE*
 8 *AGENCY CONTRACTS.—Section 2304(c)(3)(C) of title*
 9 *10, United States Code, is amended by striking out*
 10 *“agency, or” and inserting in lieu thereof “agency, or*
 11 *to procure the services of an expert or neutral for*
 12 *use”.*

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

20 *(b) REFERENCES TO THE ADMINISTRATIVE CON-*
 21 *FERENCE OF THE UNITED STATES.—Section 573 of title*
 22 *5, United States Code, is amended—*

23 *(1) by striking out subsection (c) and inserting*
 24 *in lieu thereof the following:*

1 “(c) *In consultation with other appropriate Federal*
 2 *agencies and professional organizations experienced in mat-*
 3 *ters concerning dispute resolution, the Federal Mediation*
 4 *and Conciliation Service shall—*

5 “(1) *encourage and facilitate agency use of alter-*
 6 *native means of dispute resolution; and*

7 “(2) *develop procedures that permit agencies to*
 8 *obtain the services of neutrals on an expedited basis.”;*
 9 *and*

10 (2) *in subsection (e) by striking out “on a roster*
 11 *established under subsection (c)(2) or a roster main-*
 12 *tained by other public or private organizations, or in-*
 13 *dividual”.*

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

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

17 (1) *by striking out subsections (c), (f), and (g);*
 18 *and*

19 (2) *by redesignating subsections (d) and (e) as*
 20 *subsections (c) and (d), respectively.*

21 (b) *JUDICIAL AWARDS.*—Section 581(d) of title 5,
 22 *United States Code, is amended—*

23 (1) *by striking out “(1)” after “(b)”;* *and*

24 (2) *by striking out paragraph (2).*

1 **SEC. 9. PERMANENT AUTHORIZATION OF THE ALTER-**
 2 **NATIVE DISPUTE RESOLUTION PROVISIONS**
 3 **OF TITLE 5, UNITED STATES CODE.**

4 *The Administrative Dispute Resolution Act (Public*
 5 *Law 101–552; 104 Stat. 2747; 5 U.S.C. 581 note) is amend-*
 6 *ed by striking out section 11.*

7 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

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

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

12 *“There are authorized to be appropriated such sums*
 13 *as may be necessary to carry out the purposes of this sub-*
 14 *chapter.”.*

15 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—The
 16 table of sections for chapter 5 of title 5, United States Code,
 17 is amended by inserting after the item relating to section
 18 583 the following:

“Sec. 584. Authorization of appropriations.”.

19 **SEC. 11. REAUTHORIZATION OF NEGOTIATED RULEMAKING**
 20 **ACT OF 1990.**

21 (a) *PERMANENT REAUTHORIZATION.*—Section 5 of the
 22 *Negotiated Rulemaking Act of 1990 (Public Law 101–648;*
 23 *5 U.S.C. 561 note) is repealed.*

24 (b) *CLOSURE OF ADMINISTRATIVE CONFERENCE.*—

1 (1) *IN GENERAL.*—Section 569 of title 5, United
2 *States Code, is amended—*

3 (A) *by amending the section heading to*
4 *read as follows:*

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

6 (B) *by striking out subsections (a) through*
7 *(g) and inserting in lieu thereof the following:*

8 “(a) *The President shall designate an agency or des-*
9 *ignate or establish an interagency committee to facilitate*
10 *and encourage agency use of negotiated rulemaking. An*
11 *agency that is considering, planning or conducting a nego-*
12 *tiated rulemaking may consult with such agency or com-*
13 *mittee for information and assistance.*

14 “(b) *To carry out the purposes of this subchapter, an*
15 *agency planning or conducting a negotiated rulemaking*
16 *may accept, hold, administer, and utilize gifts, devises, and*
17 *bequests of property, both real and personal: Provided, That*
18 *agency acceptance and use of such gifts, devises or bequests*
19 *do not create a conflict of interest. Gifts and bequests of*
20 *money and proceeds from sales of other property received*
21 *as gifts, devises, or bequests shall be deposited in the Treas-*
22 *ury and shall be disbursed upon the order of the head of*
23 *such agency. Property accepted pursuant to this section,*
24 *and the proceeds thereof, shall be used as nearly as possible*
25 *in accordance with the terms of the gifts, devises, or be-*

1 *quests. For purposes of Federal income, estate, or gift taxes,*
 2 *property accepted under this section shall be considered as*
 3 *a gift, devise, or bequest to the United States.”.*

4 (2) *TECHNICAL AND CONFORMING AMEND-*
 5 *MENT.—The table of sections for chapter 5 of title 5,*
 6 *United States Code, is amended by striking out the*
 7 *item relating to section 569 and inserting in lieu*
 8 *thereof the following:*

“569. Encouraging negotiated rulemaking.”.

9 (c) *EXPEDITED HIRING OF CONVENORS AND*
 10 *FACILITATORS.—*

11 (1) *DEFENSE AGENCY CONTRACTS.—Section*
 12 *2304(c)(3)(C) of title 10, United States Code, is*
 13 *amended by inserting “or negotiated rulemaking”*
 14 *after “alternative dispute resolution”.*

15 (2) *FEDERAL CONTRACTS.—Section 303(c)(3)(C)*
 16 *of the Federal Property and Administrative Services*
 17 *Act of 1949 (41 U.S.C. 253(c)(3)(C)), is amended by*
 18 *inserting “or negotiated rulemaking” after “alter-*
 19 *native dispute resolution”.*

20 (d) *AUTHORIZATION OF APPROPRIATIONS.—*

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

1 **“§ 570a. Authorization of appropriations**

2 *“There are authorized to be appropriated such sums*
 3 *as may be necessary to carry out the purposes of this sub-*
 4 *chapter.”.*

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

“Sec. 570a. Authorization of appropriations.”.

9 (e) *STUDY.—No later than 180 days after the enact-*
 10 *ment of this Act, the Director of the Office of Management*
 11 *and Budget shall complete a study with recommendations*
 12 *on expediting the establishment of negotiated rulemaking*
 13 *committees, including eliminating any redundant adminis-*
 14 *trative requirements related to filing a committee charter*
 15 *under section 9 of the Federal Advisory Committee Act and*
 16 *providing public notice of such committee under section 564*
 17 *of title 5, United States Code.*

18 **SEC. 12. JURISDICTION OF THE UNITED STATES COURT OF**
 19 **FEDERAL CLAIMS: BID PROTESTS.**

20 (a) *BID PROTESTS.—*

21 (1) *TERMINATION OF JURISDICTION OF DISTRICT*
 22 *COURTS.—Section 1491 of title 28, United States*
 23 *Code, is amended—*

24 (A) *by redesignating subsection (b) as sub-*
 25 *section (d);*

1 (B) in subsection (a)—

2 (i) by striking out “(a)(1)” and insert-
3 ing in lieu thereof “(a) CLAIMS AGAINST
4 THE UNITED STATES.—”;

5 (ii) in paragraph (2), by striking out
6 “(2) To” and inserting in lieu thereof “(b)
7 REMEDY AND RELIEF.—To”; and

8 (iii) by striking out paragraph (3);
9 and

10 (C) by inserting after subsection (b), as des-
11 ignated by paragraph (1)(B)(ii), the following
12 new subsection (c):

13 “(c) *BID PROTESTS.*—(1) *The United States Court of*
14 *Federal Claims has jurisdiction to render judgment on an*
15 *action by an interested party objecting to a solicitation by*
16 *a Federal agency for bids or proposals for a proposed con-*
17 *tract or to a proposed award or the award of a contract.*
18 *The court has jurisdiction to entertain such an action with-*
19 *out regard to whether suit is instituted before or after the*
20 *contract is awarded.*

21 “(2) *To afford relief in such an action, the court may*
22 *award any relief that the court considers proper, including*
23 *declaratory and injunctive relief.*

24 “(3) *In exercising jurisdiction under this subsection,*
25 *the court shall give due regard to the interests of national*

1 *defense and national security and the need for expeditious*
 2 *resolution of the action.*

3 “(4) *The district courts of the United States do not*
 4 *have jurisdiction of any action referred to in paragraph*
 5 *(1).”.*

6 (2) *CLERICAL AMENDMENTS.—*

7 (A) *SECTION HEADING.—The heading of*
 8 *such section is amended by inserting “**bid pro-***
 9 ***tests;**” after “generally;”.*

10 (B) *TABLE OF SECTIONS.—The table of sec-*
 11 *tions at the beginning of chapter 91 of title 28,*
 12 *United States Code, is amended by striking out*
 13 *the item relating to section 1491 and inserting*
 14 *in lieu thereof the following:*

“1491. Claims against United States generally; bid protests; actions involving
Tennessee Valley Authority.”.

15 (b) *NONEXCLUSIVITY OF GAO REMEDIES.—Section*
 16 *3556 of title 31, United States Code, is amended by striking*
 17 *out “a district court of the United States or the United*
 18 *States Claims Court” in the first sentence and inserting*
 19 *in lieu thereof “the United States Court of Federal Claims”.*

20 (c) *SAVINGS PROVISIONS.—*

21 (1) *ORDERS.—The amendments made by this*
 22 *section shall not terminate the effectiveness of orders*
 23 *that have been issued by a court in connection with*
 24 *an action within the jurisdiction of that court on the*

1 *day before the effective date of this section. Such or-*
2 *ders shall continue in effect according to their terms*
3 *until modified, terminated, superseded, set aside, or*
4 *revoked by a court of competent jurisdiction or by op-*
5 *eration of law.*

6 (2) *PROCEEDINGS AND APPLICATIONS.—(A) The*
7 *amendments made by this section shall not affect the*
8 *jurisdiction of a court of the United States to con-*
9 *tinue with any proceeding that is pending before the*
10 *court on the day before the effective date of this sec-*
11 *tion.*

12 (B) *Orders may be issued in any such proceed-*
13 *ing, appeals may be taken therefrom, and payments*
14 *may be made pursuant to such orders, as if this sec-*
15 *tion had not been enacted. An order issued in any*
16 *such proceeding shall continue in effect until modi-*
17 *fied, terminated, superseded, set aside, or revoked by*
18 *a court of competent jurisdiction or by operation of*
19 *law.*

20 (C) *Nothing in this paragraph prohibits the dis-*
21 *continuance or modification of any such proceeding*
22 *under the same terms and conditions and to the same*
23 *extent that such proceeding could have been discon-*
24 *tinued or modified if this section had not been en-*
25 *acted.*

1 (d) *EFFECTIVE DATE.*—*This section and the amend-*
2 *ments made by this section shall take effect on October 1,*
3 *1996.*

Amend the title so as to read: “An Act to reauthorize alternative means of dispute resolution in the Federal administrative process, and for other purposes.”.

Attest:

Secretary.

104TH CONGRESS
2^D SESSION

H. R. 2977

AMENDMENTS

HR 2977 EAS—2

HR 2977 EAS—3

HR 2977 EAS—4

HR 2977 EAS—5