AN ACT

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

H. R. 4194

104TH CONGRESS
AN ACT

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Administrative Dispute Resolution Act of 1996”.
SEC. 2. AMENDMENT TO DEFINITIONS.

Section 571 of title 5, United States Code, is amended—

(1) in paragraph (3)—

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

(B) by striking “settlement negotiations,”;

and

(C) by striking “and arbitration” and inserting “arbitration, and use of ombuds”; and

(2) in paragraph (8)—

(A) in subparagraph (B) by striking “decision,” and inserting “decision;”;

and

(B) by striking the matter following subparagraph (B).

SEC. 3. AMENDMENTS TO CONFIDENTIALITY PROVISIONS.

(a) LIMITATION OF CONFIDENTIALITY APPLICATION TO COMMUNICATION.—Subsections (a) and (b) of section 574 of title 5, United States Code, are each amended in the matter before paragraph (1) by striking “any information concerning”.

(b) DISPUTE RESOLUTION COMMUNICATION.—Section 574(b)(7) of title 5, United States Code, is amended to read as follows:

“(7) except for dispute resolution communications generated by the neutral, the dispute resolution
communication was provided to or was available to all parties to the dispute resolution proceeding.”.

(c) Alternative Confidentiality Procedures.—Section 574(d) of title 5, United States Code, is amended—

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

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

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

(d) Exemption From Disclosure by Statute.—

Section 574 of title 5, United States Code, is amended by amending subsection (j) to read as follows:

“(j) A dispute resolution communication which is between a neutral and a party and which may not be disclosed under this section shall also be exempt from disclosure under section 552(b)(3).”.

SEC. 4. AMENDMENT TO REFLECT THE CLOSURE OF THE ADMINISTRATIVE CONFERENCE.

(a) Promotion of Administrative Dispute Resolutions.—Section 3(a)(1) of the Administrative Dis-
pute Resolution Act (5 U.S.C. 571 note; Public Law 101–552; 104 Stat. 2736) is amended to read as follows:

“(1) consult with the agency designated by, or the interagency committee designated or established by, the President under section 573 of title 5, United States Code, to facilitate and encourage agency use of alternative dispute resolution under subchapter IV of chapter 5 of such title; and”.

(b) Compilation of Information.—

(1) In general.—Section 582 of title 5, United States Code, is repealed.

(2) Technical and Conforming Amendment.—The table of sections for chapter 5 of title 5, United States Code, is amended by striking the item relating to section 582.

(c) Federal Mediation and Conciliation Service.—Section 203(f) of the Labor Management Relations Act, 1947 (29 U.S.C. 173(f)) is amended by striking “the Administrative Conference of the United States and other agencies” and inserting “the agency designated by, or the interagency committee designated or established by, the President under section 573 of title 5, United States Code,”.
SEC. 5. AMENDMENTS TO SUPPORT SERVICES PROVISION.

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

SEC. 6. AMENDMENTS TO THE CONTRACT DISPUTES ACT.

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

(1) in subsection (d) by striking the second sentence and inserting: “The contractor shall certify the claim when required to do so as provided under subsection (c)(1) or as otherwise required by law.”; and

(2) in subsection (e) by striking the first sentence.

SEC. 7. AMENDMENTS ON ACQUIRING NEUTRALS.

(a) EXPEDITED HIRING OF NEUTRALS.—

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

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

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(b) References to the Administrative Conference of the United States.—Section 573 of title 5, United States Code, is amended—

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

“(c) The President shall designate an agency or designate or establish an interagency committee to facilitate and encourage agency use of dispute resolution under this subchapter. Such agency or interagency committee, in consultation with other appropriate Federal agencies and professional organizations experienced in matters concerning dispute resolution, shall—

“(1) encourage and facilitate agency use of alternative means of dispute resolution; and

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

(2) in subsection (e) by striking “on a roster established under subsection (c)(2) or a roster maintained by other public or private organizations, or individual”.

SEC. 8. ARBITRATION AWARDS AND JUDICIAL REVIEW.

(a) Arbitration Awards.—Section 580 of title 5, United States Code, is amended—

(1) by striking subsections (e), (f), and (g); and
(2) by redesignating subsections (d) and (e) as subsections (e) and (d), respectively.

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

(1) by striking ``(1)'' after ``(b)''; and

(2) by striking paragraph (2).

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

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

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

(3) in subsection (b)—

(A) by striking “may offer to use arbitration for the resolution of issues in controversy, if’’ and inserting “shall not offer to use arbitration for the resolution of issues in controversy unless’’; and

(B) by striking in paragraph (1) “has authority’’ and inserting “would otherwise have authority’’; and

(4) by adding at the end the following:
“(c) Prior to using binding arbitration under this subchapter, the head of an agency, in consultation with the Attorney General and after taking into account the factors in section 572(b), shall issue guidance on the appropriate use of binding arbitration and when an officer or employee of the agency has authority to settle an issue in controversy through binding arbitration.”

SEC. 9. PERMANENT AUTHORIZATION OF THE ALTERNATIVE DISPUTE RESOLUTION PROVISIONS OF TITLE 5, UNITED STATES CODE.

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

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

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

``§ 584. Authorization of appropriations

``There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subchapter.”.

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

“§584. Authorization of appropriations.”.
SEC. 11. REAUTHORIZATION OF NEGOTIATED RULEMAKING

ACT OF 1990.

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

(b) CLOSURE OF ADMINISTRATIVE CONFERENCE.—

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

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

“§ 569. Encouraging negotiated rulemaking”; and

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

“(a) The President shall designate an agency or designate or establish an interagency committee to facilitate and encourage agency use of negotiated rulemaking. An agency that is considering, planning, or conducting a negotiated rulemaking may consult with such agency or committee for information and assistance.

“(b) To carry out the purposes of this subchapter, an agency planning or conducting a negotiated rulemaking may accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal if that agency’s acceptance and use of such gifts, devises, or bequests do not create a conflict of interest. Gifts and bequests of money and proceeds from sales of other property
received as gifts, devises, or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the head of such agency. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gifts, devises, or bequests.”.

(2) Technical and Conforming Amendment.—The table of sections for chapter 5 of title 5, United States Code, is amended by striking the item relating to section 569 and inserting the following:

“569. Encouraging negotiated rulemaking.”.

c) Expedited Hiring of Convenors and Facilitators.—

(1) Defense Agency Contracts.—Section 2304(c)(3)(C) of title 10, United States Code, is amended by inserting “or negotiated rulemaking” after “alternative dispute resolution”.

(2) Federal Contracts.—Section 303(c)(3)(C) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(3)(C)), is amended by inserting “or negotiated rulemaking” after “alternative dispute resolution”.

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

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§ 570a. Authorization of appropriations

“There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subchapter.”.
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(2) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 5 of title 5, United States Code, is amended by inserting after the item relating to section 570 the following:

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“570a. Authorization of appropriations.”.
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(e) **NEGOTIATED RULEMAKING COMMITTEES.**—The Director of the Office of Management and Budget shall—

(1) within 180 days of the date of the enactment of this Act, take appropriate action to expedite the establishment of negotiated rulemaking committees and committees established to resolve disputes under the Administrative Dispute Resolution Act, including, with respect to negotiated rulemaking committees, eliminating any redundant administrative requirements related to filing a committee charter under section 9 of the Federal Advisory Committee Act (5 U.S.C. App.) and providing public notice of
such committee under section 564 of title 5, United
States Code; and

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

Passed the House of Representatives September 27, 1996.

Attest:

Clerk.