

106TH CONGRESS  
1ST SESSION

# H. R. 2946

To amend title 5, United States Code, to authorize the Merit Systems Protection Board to conduct an alternative dispute resolution pilot program to assist Federal Government agencies in resolving serious workplace disputes, and to establish an administrative judge pay schedule for administrative judges employed by the Merit Systems Protection Board.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 1999

Mr. GEKAS introduced the following bill; which was referred to the Committee on Government Reform

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## A BILL

To amend title 5, United States Code, to authorize the Merit Systems Protection Board to conduct an alternative dispute resolution pilot program to assist Federal Government agencies in resolving serious workplace disputes, and to establish an administrative judge pay schedule for administrative judges employed by the Merit Systems Protection Board.

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. POLICY, FINDINGS, AND PURPOSES.**

4 (a) POLICY.—Chapter 12 of title 5, United States  
5 Code, is amended to authorize the United States Merit

1 Systems Protection Board to test and evaluate a variety  
2 of alternative dispute resolution techniques in workplace  
3 disputes involving Federal administrative agencies and  
4 proceedings governed by chapters 5 and 7 of title 5,  
5 United States Code. The statement of purpose and policy  
6 is a reaffirmation of the encouragement to Federal agen-  
7 cies to use alternative dispute resolution, enunciated in the  
8 Administrative Dispute Resolution Act of 1996. (Public  
9 Law 104–320).

10 (b) FINDINGS.—The Congress finds that—

11 (1) Workplace disputes waste resources of the  
12 Federal Government, take up too much time, and  
13 deflect managers and employees from their primary  
14 job functions.

15 (2) In the past, the Federal Government has re-  
16 lied heavily upon traditional, adversarial processes.

17 (3) Alternative dispute resolution has been use-  
18 ful in resolving a variety of matters in controversy  
19 without litigation, providing quick resolution, open  
20 communications, improved working relationships and  
21 avoidance of costly and lengthy litigation, and use of  
22 alternative dispute resolution should be promoted.

23 (4) It is important to determine whether man-  
24 datory alternative dispute resolution is desirable, ap-  
25 propriate, or effective for certain workplace disputes.

1           (5) The Merit Systems Protection Board is well  
2 suited to conduct a 3-year alternative dispute resolu-  
3 tion program focusing on workplace disputes in the  
4 Federal sector because it is an independent adju-  
5 dicative agency that decides approximately 10,000  
6 cases involving Federal workplace disputes each  
7 year, has a long history of using alternative dispute  
8 resolution to settle cases filed with the Board, and  
9 has as one of its missions the responsibility to study  
10 and report on issues of importance to the civil serv-  
11 ice system. The Board's workload is diverse and in-  
12 cludes a sufficient variety of both highly complex  
13 cases and high-volume less complex cases to ade-  
14 quately test and evaluate broader use of alternative  
15 dispute resolution techniques. It has an experienced  
16 corps of administrative judges who are already fa-  
17 miliar with traditional settlement techniques.

18       (c) PURPOSES.—The Board shall evaluate the alter-  
19 native dispute resolution pilot program and, after the com-  
20 pletion of the 3-year program, shall file a comprehensive  
21 report with the President and Congress.

1 **SEC. 2. MERIT SYSTEMS PROTECTION BOARD ALTER-**  
2 **NATIVE DISPUTE RESOLUTION PILOT PRO-**  
3 **GRAM.**

4 (a) AMENDMENT TO CHAPTER 12 OF TITLE 5.—  
5 Chapter 12 of title 5, United States Code, is amended by  
6 adding immediately after section 1206 the following:

7 **“§ 1207. Establishment of alternative dispute resolu-**  
8 **tion program**

9 “(a) IN GENERAL.—

10 “(1) The Merit Systems Protection Board is  
11 authorized to establish a 3-year program to provide  
12 employees and agencies with alternative dispute res-  
13 olution processes to apply to workplace disputes and  
14 disagreements involving removals, suspensions for  
15 more than 14 days, and other adverse actions under  
16 section 7512.

17 “(2) The Board shall test and evaluate a vari-  
18 ety of alternative dispute resolution techniques,  
19 which may include—

20 “(A) settlement judges or attorneys;

21 “(B) mediation through use of shared  
22 neutrals;

23 “(C) mediation by Merit Systems Protec-  
24 tion Board staff or others as appointed by the  
25 Chairman;

26 “(D) administrative arbitration; and

1           “(E) certified alternative dispute resolution  
2           counselors (agency personnel specifically trained  
3           in Board law and alternative dispute resolution  
4           techniques).

5           “(b) EARLY INTERVENTION ALTERNATIVE DISPUTE  
6 RESOLUTION.—

7           “(1) INVOKING RESOLUTION PROCESS.—The  
8           Board’s early intervention alternative dispute resolu-  
9           tion process may be invoked after an agency has  
10          issued a notice letter of a proposed action to an em-  
11          ployee but before a final decision has been made  
12          under section 7513.

13          “(2) EARLY INTERVENTION.—Any agency or  
14          employee may seek early intervention alternative dis-  
15          pute resolution from the Board by filing a request  
16          with the Board. If the Board determines that alter-  
17          native dispute resolution is appropriate, the parties  
18          shall participate.

19          “(3) MANDATORY RESOLUTION.—The Chair-  
20          man of the Merit Systems Protection Board is au-  
21          thorized to designate up to 3 agencies with a sub-  
22          stantial volume of Board appeals for participation in  
23          a mandatory early intervention alternative dispute  
24          resolution program. Under this alternative dispute  
25          resolution process, all matters appealable under sec-

1       tion 7512 shall be subject to early intervention alter-  
2       native dispute resolution unless the Board deter-  
3       mines that the matter is not appropriate for the pro-  
4       gram or a statute or collective bargaining agreement  
5       precludes inclusion of the matter in the alternative  
6       dispute resolution program.

7       “(c) ALTERNATIVE DISPUTE RESOLUTION AFTER AN  
8 APPEAL OR PETITION FOR REVIEW IS FILED.—

9               “(1) APPEAL OR PETITION FOR REVIEW.—Once  
10       an appeal or petition for review is filed with the  
11       Board, any employee or agency may request that a  
12       case be selected for alternative dispute resolution.  
13       The request shall be filed with the administrative  
14       judge assigned to the appeal or with the Clerk of the  
15       Board if the matter is before the Board on petition  
16       for review at the same time that the appeal or peti-  
17       tion for review is filed.

18               “(2) SELECTION OF CASES.—The Board shall  
19       have sole authority to select cases for alternative dis-  
20       pute resolution after an appeal or petition for review  
21       is filed. The Board may also select cases for alter-  
22       native dispute resolution as it determines appro-  
23       priate.

24       “(d) IMPLEMENTATION.—

1           “(1) PROGRAM DUTIES.—In carrying out the  
2 program under this section, the Board shall—

3           “(A) develop and prescribe standards for  
4 selecting and handling cases in which alter-  
5 native dispute resolution is to be used;

6           “(B) take such actions as may be nec-  
7 essary, including waiver of all statutory, regu-  
8 latory, or Board imposed adjudicatory time  
9 frames; and

10           “(C) establish a time target within which  
11 it intends to complete the alternative dispute  
12 resolution process.

13           “(2) EXTENSION.—A party may request an ex-  
14 tension of the alternative dispute resolution period,  
15 or the Board may extend the time period as it finds  
16 appropriate.

17           “(3) RECRUITMENT.—The Chairman of the  
18 Merit Systems Protection Board may recruit and  
19 hire temporary staff or contractors to carry out this  
20 section.

21           “(4) REGULATIONS.—The Board is authorized  
22 to prescribe such regulations as may be necessary to  
23 implement the alternative dispute resolution pro-  
24 gram.

25           “(e) EVALUATION.—

1           “(1) CRITERIA.—The Board’s Office of Policy  
2           and Evaluation shall establish criteria for evaluating  
3           the alternative dispute resolution program and pre-  
4           pare a report containing findings and recommenda-  
5           tions as to whether mandatory alternative dispute  
6           resolution is desirable, effective, and appropriate for  
7           cases decided by Federal administrative agencies  
8           under proceedings governed by chapters 5 and 7.

9           “(2) REPORT CONTENT.—The report shall  
10          include—

11                 “(A) the number of cases subject to the al-  
12                 ternative dispute resolution program, the agen-  
13                 cies involved, the results, and the resources ex-  
14                 pended;

15                 “(B) a comprehensive analysis of the effec-  
16                 tiveness of the program, including whether it is  
17                 cost-effective;

18                 “(C) a survey of the satisfaction of partici-  
19                 pants; and

20                 “(D) a recommendation regarding the de-  
21                 sirability of extending the alternative dispute  
22                 resolution program beyond the prescribed expi-  
23                 ration date and any recommended changes.

24           “(3) REPORT DATE.—The report shall be sub-  
25          mitted to the President and the Congress 180 days

1 following the close of the alternative dispute resolu-  
2 tion program.”.

3 (b) APPROPRIATIONS.—

4 (1) IN GENERAL.—For the purpose of carrying  
5 out the alternative dispute resolution program estab-  
6 lished by the amendment made by subsection (a),  
7 there are authorized to be appropriated the following  
8 sums: \$1,000,000 for fiscal year 2000; \$1,000,000  
9 adjusted by the most recent percentage change in  
10 the employment cost index (ECI) for fiscal year  
11 2001; and \$1,000,000 adjusted by the most recent  
12 percentage change in the ECI for fiscal year 2002.

13 (2) NO REDUCTIONS.—The authorization of ap-  
14 propriations by paragraph (1) shall not have the ef-  
15 fect of reducing any funds appropriated for the  
16 Board for the purpose of carrying out its statutory  
17 mission under section 1204.

18 (c) EFFECTIVE DATE.—The amendment made by  
19 subsection (a) shall take effect no later than the close of  
20 the 60th day after the date of enactment of appropriations  
21 authorized by subsection (b)(1) for fiscal year 2000 and  
22 shall remain in effect for 3 years from the effective date.

23 (d) CONFORMING AMENDMENT.—The table of sec-  
24 tions for subchapter I of chapter 12 of title 5, United  
25 States Code, is amended by adding after the item relating

1 to section 1206 the following new item:

“1207. Establishment of alternative dispute resolution program.”.

2 **SEC. 3. POLICY AND FINDINGS.**

3 (a) **POLICY.**—Chapter 53 of title 5, United States  
4 Code, is amended to establish an MSPB Administrative  
5 Judge Pay Schedule and to provide MSPB administrative  
6 judges with pay that is comparable to that of immigration  
7 judges (IJs) and administrative law judges (ALJs).

8 (b) **FINDINGS.**—The Congress finds that—

9 (1) MSPB administrative judges perform work  
10 at the same level of importance and complexity as  
11 immigration judges and administrative law judges.  
12 Federal employees deserve to have their cases heard  
13 by judges with the same pay and status as the  
14 judges who hear private sector benefits and employ-  
15 ment law cases. Veterans in the Federal workforce  
16 deserve to have their cases heard by judges with the  
17 same pay and status as the judges who hear cases  
18 involving illegal aliens.

19 (2) MSPB administrative judges are leaving the  
20 Board for positions with other adjudicatory agencies.  
21 During the past 4 years, the Board has lost 20 per-  
22 cent of its most experienced judges to other adju-  
23 dicatory agencies. MSPB administrative judges  
24 should not have to leave the agency to achieve the  
25 pay and status they deserve when they are adjudi-

1 cating cases with the same importance and com-  
2 plexity as cases heard by IJs and ALJs.

3 **SEC. 4. MERIT SYSTEMS PROTECTION BOARD ADMINISTRA-**  
4 **TIVE JUDGES AND COMPENSATION.**

5 (a) AMENDMENT TO CHAPTER 53 OF TITLE 5.—  
6 Chapter 53 of title 5, United States Code, is amended by  
7 adding immediately after section 5372a the following:

8 **“§ 5372b. Merit Systems Protection Board administra-**  
9 **tive judges**

10 “(a) DEFINITIONS.—For the purposes of this  
11 section—

12 “(1) the term ‘administrative judge (AJ)’  
13 means an employee of the Merit Systems Protection  
14 Board appointed to an administrative judge position  
15 and paid under the MSPB Administrative Judge  
16 Schedule established by subsection (b); and

17 “(2) the term ‘administrative judge (GS)’  
18 means an employee of the Merit Systems Protection  
19 Board appointed to an administrative judge position  
20 and paid under the General Schedule described in  
21 section 5332 of this title.

22 “(b) IN GENERAL.—There is established the MSPB  
23 Administrative Judge Pay Schedule which shall have 4 lev-  
24 els of pay, designated as AJ-1, -2, -3, and -4. Each ad-

1 ministrative judge (AJ) shall be paid at one of those levels  
2 in accordance with subsection (c).

3 “(c) RATES OF PAY.—

4 “(1) BASIC PAY.—The rates of basic pay for  
5 the levels of the MSPB Administrative Judge Pay  
6 Schedule established by the subsection (b) shall be  
7 as follows:

8 “(A) AJ-1: 70 percent of the next to high-  
9 est rate of basic pay for the Senior Executive  
10 Service.

11 “(B) AJ-2: 80 percent of the next to high-  
12 est rate of basic pay for the Senior Executive  
13 Service.

14 “(C) AJ-3: 90 percent of the next to high-  
15 est rate of basic pay for the Senior Executive  
16 Service.

17 “(D) AJ-4: 92 percent of the next to high-  
18 est rate of basic pay for the Senior Executive  
19 Service.

20 “(2) LOCALITY PAY.—Locality pay as provided  
21 by section 5304 shall be applied to the basic pay for  
22 administrative judges (AJ) paid under the MSPB  
23 Administrative Judge Pay Schedule.

24 “(d) APPOINTMENT AND ADVANCEMENT.—

1           “(1) INITIAL APPOINTMENT.—Except as pro-  
2           vided in paragraph (3), initial appointment of an ad-  
3           ministrative judge (AJ) shall be at the AJ-1 pay  
4           level. Subject to subsection (d)(2), an administrative  
5           judge (AJ) shall be advanced to AJ-2 upon comple-  
6           tion of 104 weeks of service, to AJ-3 upon comple-  
7           tion of 104 weeks of service at the next lower level,  
8           and to AJ-4 upon completion of 52 weeks of service  
9           at the next lower level.

10           “(2) ADVANCEMENT.—Advancement to the AJ-  
11           2, -3, and -4 levels as provided by paragraph (1)  
12           shall not be effected if the Chairman of the Merit  
13           Systems Protection Board determines that the work  
14           of an administrative judge (AJ) at the next lower  
15           level is not of an acceptable level of competence. An  
16           administrative judge (AJ) may appeal an adverse ac-  
17           ceptable level of competence determination to the  
18           Merit Systems Protection Board under the same  
19           conditions by which an administrative judge (GS)  
20           may appeal the denial of a periodic step increase in  
21           pay under section 5335(c).

22           “(3) EXCEPTION.—Notwithstanding paragraph  
23           (1), the Chairman of the Merit Systems Protection  
24           Board may provide for initial appointment of an ad-  
25           ministrative judge (AJ) at a level higher than AJ-

1       1 under such circumstances as the Chairman may  
2       determine appropriate.

3           “(4) CONVERSION.—An administrative judge  
4       (GS), who occupies a level below grade 15 of the  
5       General Schedule, may, when entitled by tenure and  
6       performance to be advanced to grade 15 of the Gen-  
7       eral Schedule, be converted to the MSPB Adminis-  
8       trative Judge Pay Schedule and appointed at the  
9       AJ–1 level.”.

10       (b) TRANSITION PROVISIONS.—

11           (1) CONVERSION TO MSPB ADMINISTRATIVE  
12       JUDGE PAY SCHEDULE.—Subject to paragraphs (2)  
13       and (3), an administrative judge (GS) who is serving  
14       as of the effective date of this section and who occu-  
15       pies the grade 15 level of the General Schedule shall  
16       be converted to the MSPB Administrative Judge  
17       Pay Schedule and appointed as an administrative  
18       judge (AJ). Each administrative judge (AJ) so con-  
19       verted shall be placed in the appropriate pay level  
20       prescribed under section 5372(c) of title 5, United  
21       States Code, as added by subsection (a), based on  
22       the amount of time the administrative judge (AJ)  
23       has served as an administrative judge (GS).

24           (2) LIMITATION ON CONVERSION.—Conversion  
25       of an administrative judge (GS) to administrative

1 judge (AJ) under paragraph (1) shall not be effected  
2 if the Chairman of the Merit Systems Protection  
3 Board determines that the work of an administrative  
4 judge (GS) at the grade 15 level of the General  
5 Schedule is not of an acceptable level of competence.  
6 An administrative judge (AJ) may appeal an adverse  
7 acceptable level of competence determination to the  
8 Merit Systems Protection Board under the same  
9 conditions by which an administrative judge (GS)  
10 may appeal the denial of a periodic step increase in  
11 pay under section 5335(c).

12 (3) LIMITATION ON PAY INCREASES.—Notwith-  
13 standing the rates of basic pay prescribed under sec-  
14 tion 5372(c) of title 5, United States Code, as added  
15 by subsection (a), the Chairman of the Merit Sys-  
16 tems Protection Board may, on the effective date of  
17 this section and each year for a period of 7 years  
18 thereafter, limit the pay increase for each adminis-  
19 trative judge (AJ) to an adjustment equal to—

20 (A) the percentage pay adjustment re-  
21 ceived by members of the Senior Executive  
22 Service under section 5382(c) of this title, if  
23 any;

24 (B) locality pay under section 5304; and

25 (C) an additional \$3,000.

1 The Senior Executive Service percentage pay adjust-  
2 ment, if any, shall be included in basic pay. Annual  
3 adjustments in pay after the effective date of this  
4 section will be made on the first day of the first pay  
5 period of each calendar year. The limitation on pay  
6 increases under this subsection may continue during  
7 the time period prescribed by this subsection until  
8 such time as the pay of each administrative judge  
9 (AJ) reaches the appropriate rate of basic pay under  
10 section 5372b(c) of title 5, United States Code, as  
11 added by subsection (a). The Chairman may waive  
12 any limitation on pay under this subsection in the  
13 case of an administrative judge (AJ) serving as a  
14 chief administrative judge.

15 (4) PAY IN RELATION TO GRADE 15 OF THE  
16 GENERAL SCHEDULE.—In no case shall an adminis-  
17 trative judge (AJ) who is converted in accordance  
18 with paragraph (1), or whose pay increase in any  
19 year is limited under paragraph (3), be paid after  
20 the effective date of this section at a rate that is less  
21 than the administrative judge's (AJ) rate of pay  
22 would have been had the administrative judge (AJ)  
23 remained as an administrative judge (GS) occupying  
24 the grade 15 level of the General Schedule.

1           (5) DEFINITIONS.—For purposes of this  
2 subsection—

3           (A) the term “administrative judge (AJ)”  
4 means an employee of the Merit Systems Pro-  
5 tection Board appointed to an administrative  
6 judge position and paid under the MSPB Ad-  
7 ministrative Judge schedule established by the  
8 amendment made by subsection (a); and

9           (B) the term “administrative judge (GS)”  
10 means an employee of the Merit Systems Pro-  
11 tection Board appointed to an administrative  
12 judge position and paid under the General  
13 Schedule described in section 5332 of this title.

14 (c) APPROPRIATIONS.—

15           (1) IN GENERAL.—There are authorized to be  
16 appropriated such sums as are necessary for the  
17 purpose of carrying out this section.

18           (2) NO REDUCTION.—The authorization of ap-  
19 propriations by paragraph (1) shall not have the ef-  
20 fect of reducing any funds appropriated for the  
21 Board for the purpose of carrying out its statutory  
22 mission under section 1204 of title 5, United States  
23 Code.

24           (d) EFFECTIVE DATE.—This section shall take effect  
25 on the first day of the first pay period of the calendar

1 year immediately following the date of enactment of ap-  
2 propriations authorized by subsection (c)(1).

3 (e) CONFORMING AMENDMENT.—The table of sec-  
4 tions for subchapter VII of chapter 53 of title 5, United  
5 States Code, is amended by adding after the item relating  
6 to section 5372a the following new item:

“5372b. Merit Systems Protection Board administrative judges.”.

○