Senate Research Center   S.B. 694
                                                                                    By: Brown
                                                                              Jurisprudence
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                                                                                    As Filed

DIGEST

Currently, Texas does not have regulations regarding the use of alternative dispute resolution procedures by a state agency. The rapid growth in the use of alternative dispute resolution (ADR) processes in the private sector over the last few decades has demonstrated that there are more effective, equitable and efficient ways of dealing with conflict than traditional adversarial methods. Use of ADR procedures by government entities has been shown to save money, improve conflict management effectiveness, and facilitate better relationships between government and its constituents. Several Texas agencies have already used ADR procedures in one form or another. Notwithstanding these precedents, legal counsel at some agencies have been hesitant to take advantage of ADR procedures without clear legislative authorization and encouragement. This bill will provide regulations for the use of alternative dispute resolution procedures by state agencies.

PURPOSE

As proposed, S.B. 694 provides regulations for the use of alternative dispute resolution procedures by state agencies.

RULEMAKING AUTHORITY

Rulemaking authority is granted to state agencies subject to Chapter 2001, in SECTION 1 (Section 2008.051(b), Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1.   Amends Title 10A, Government Code, by adding Chapter 2008, as follows:

CHAPTER 2008. ALTERNATIVE DISPUTE RESOLUTION AT STATE AGENCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2008.001. SHORT TITLE: Governmental Dispute Resolution Act.

Sec. 2008.002. POLICY. Provides that it is the policy of this state that disputes before state agencies be resolved as fairly and expeditiously as possible and that each state agency support this policy by developing and using alternative dispute resolution procedures in appropriate aspects of the agency's operations and programs.

Sec. 2008.003. DEFINITIONS. Defines "alternative dispute resolution procedure," "state agency," "contested case," "party," "person," and "rule."

Sec. 2008.004. AGENCY CONTRACTS; BUDGETING FOR COSTS. Authorizes a state agency to pay for costs necessary to meet the objectives of this chapter, including reasonable fees for certain items. Authorizes an agency, to the extent allowed by the General Appropriations Act, to use for this purpose money budgeted for legal services, executive administration, or any other appropriate aspect of the agency's operations. Authorizes a state agency to contract with another state agency, including the Center for Public Policy Dispute Resolution at the University of Texas School of Law (center), or with a private entity for any service necessary to meet the objectives of this chapter.

SUBCHAPTER B. ALTERNATIVE DISPUTE RESOLUTION

Sec. 2008.051. DEVELOPMENT AND USE OF PROCEDURES. Requires alternative dispute resolution procedures developed and used by a state agency to be consistent with Chapter 154, Civil Practice and Remedies Code, and with administrative procedure law, Chapter 2001. Authorizes the State Office of Administrative Hearings to issue model guidelines for the use of alternative dispute resolution procedures by state agencies. Requires each agency that is subject to Chapter 2001 to adopt its alternative dispute resolution procedures by rule.

Sec. 2008.052. SUPPLEMENTAL NATURE OF PROCEDURES. Provides that alternative dispute resolution procedures developed and used under this chapter supplement and do not limit other dispute resolution procedures available at a state agency. Prohibits this chapter from being applied in a manner that denies a person certain rights, except to the extent that an informed person voluntarily agrees in advance to be bound by the outcome of an alternative dispute resolution procedure.

Sec. 2008.053. IMPARTIAL THIRD PARTIES. Sets forth regulations regarding the appointment by a state agency of a person to serve as an impartial third party in an alternative dispute resolution procedure.

Sec. 2008.054. CONFIDENTIALITY OF CERTAIN RECORDS AND COMMUNICATIONS. Sets forth regulations regarding the confidentiality of certain records and communications.

Sec. 2008.055. INTERAGENCY SHARING OF INFORMATION; CONSISTENCY OF PROCEDURES. Authorizes a state agency to share the results of its alternative dispute resolution program with other agencies and with the center. Authorizes the center to collect and analyze the information and report its conclusions and useful information to state agencies and the legislature. Provides that state agencies should, to the extent feasible, adopt policies and procedures for alternative dispute resolution that are consistent with the policies and procedures of other state agencies.

SECTION 2. Amends Section 2003.001, Government Code, to define "alternative dispute resolution procedure." Makes conforming changes.

SECTION 3. Amends Section 2003.021(b), Government Code, to authorize the State Office of Administrative Hearings to conduct alternative dispute resolution procedures as described in Section 2008.002.

SECTION 4. Amends Section 2003.042, Government Code, to authorize an administrative law judge (ALJ) to take certain actions regarding alternative dispute resolution. Prohibits the ALJ from serving as an impartial third party for a dispute that the ALJ refers to an alternative dispute resolution procedure.

SECTION 5. Amends Section 2003.047, Government Code, by adding Subsection (j), to prohibit an ALJ hearing a case on behalf of the Texas Natural Resource Conservation Commission (TNRCC), without the agreement of all parties, from issuing an order referring the case to an alternative dispute resolution procedure if TNRCC has already conducted an unsuccessful alternative dispute resolution procedure. Requires the ALJ, if TNRCC has not already conducted an alternative dispute resolution procedure, to consider TNRCC's recommendation in determining whether to issue an order referring the case to the procedure.

SECTION 6. Effective date: September 1, 1997.

SECTION 7. Emergency clause.