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SENATE BILL 440

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO DISPUTE RESOLUTION; ENACTING THE ALTERNATIVE
DISPUTE RESOLUTION ACT; PRESCRIBING POWERS AND DUTIES.

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

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

Section 2. PURPOSE.--The purpose of the Alternative
Dispute Resolution Act is to resolve public disputes through
methods of building consensus that are efficient, flexible,
creative and comprehensive. "

Section 3. DEFINITIONS.--As used in the Alternative
Dispute Resolution Act:

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

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1 agencies, instrumentalities and institutions and all water and
2 natural gas associations organized pursuant to Chapter 3,
3 Article 28 NMSA 1978;

4 B. "alternative dispute resolution" means a
5 process other than litigation used to resolve disputes,
6 including mediation, facilitation, regulatory negotiation,
7 fact-finding, conciliation, mini-trials, early neutral
8 evaluation and policy dialogues;

9 C. "convenor" means a person or agency that helps
10 parties decide whether alternative dispute resolution is
11 appropriate and that encourages parties to use alternative
12 dispute resolution in a dispute;

13 D. "coordinator" means a person appointed by an
14 agency who promotes the use of alternative dispute resolution;

15 E. "neutral" means a person who provides services
16 as a mediator, facilitator, fact-finder or conciliator or who
17 aids parties to resolve disputes; and

18 F. "public dispute" means a dispute that involves
19 the public interest and the determination of rights,
20 obligations and privileges of persons and agencies.

21 Section 4. AUTHORIZATION--AGREEMENTS--COSTS--
22 COORDINATORS--NEUTRALS.--

23 A. An agency is authorized to use alternative
24 dispute resolution to resolve a dispute, issue or controversy
25 in which the agency is involved. An agency may use

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1 alternative dispute resolution in all areas of their
2 operations, programs and functions, including formal and
3 informal adjudications, rulemakings, enforcement actions,
4 permitting, certification, licensing, policy development,
5 contract administration and other work place disputes.

6 B. An agency shall employ voluntary procedures to
7 be used at the agency's discretion or at the request of
8 another person. A decision by an agency whether to employ
9 alternative dispute resolution shall not be subject to
10 judicial review.

11 C. An agency shall consider using alternative
12 dispute resolution if:

13 (1) the nature of the controversy appears to
14 be suited to alternative dispute resolution through consensus
15 building; and

16 (2) the parties with a substantial interest
17 in the conflict are identifiable and appear willing to use
18 alternative dispute resolution either by direct participation
19 or through a representative.

20 D. An agency that chooses to use alternative
21 dispute resolution shall enter into an agreement that:

22 (1) provides for the appointment of neutrals,
23 consultants or experts;

24 (2) extends any limitation periods applicable
25 to the commencement or conclusion of formal administrative or

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1 judicial proceedings; and

2 (3) establishes rules for the alternative
3 dispute resolution.

4 E. The agreement may be included in an enforcement
5 order, stipulation, contract, permit or other document entered
6 into or issued by an agency to assist in the resolution of
7 future disputes. The agreement shall not require an agency to
8 take any action that is inconsistent or contrary to any state
9 law or rule.

10 F. An agency may pay the costs necessary to
11 achieve the objectives of the Alternative Dispute Resolution
12 Act, including reasonable fees for:

- 13 (1) training;
- 14 (2) policy review;
- 15 (3) system design;
- 16 (4) evaluation;
- 17 (5) technical and expert assistance; and
- 18 (6) the use of neutrals.

19 G. An agency may appoint a coordinator who shall:

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

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

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modifications;

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

(4) arrange for training of agency staff in alternative dispute resolution practices; and

(5) provide information about the agency's alternative dispute resolution practices to staff and to the public.

H. A neutral shall be selected and shall serve at the will of the parties of an alternative dispute resolution.

I. The parties shall agree how to provide compensation to a neutral.

J. A neutral shall have no official, financial or personal conflict of 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 neutral may continue to serve.

1 FORTY-FOURTH LEGISLATURE

SB 440/a

2 FIRST SESSION, 1999

3
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5
6 February 16, 1999

7
8 Mr. President:

9
10 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
11 whom has been referred

12
13 SENATE BILL 440

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

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18
19 1. On page 4, line 10, strike "An agency may" and insert
20 "The parties involved shall".,

21
22 and thence referred to the JUDICIARY COMMITTEE.

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24 Respectfully submitted,

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FIRST SESSI ON, 1999

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Roman M. Maes, Chair man

Adopted _____ Not

Adopted _____

(Chi ef Clerk)

(Chi ef Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Fi del, Maci as, McKi bben, Robi nson

Absent: None

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FIRST SESSION, 1999

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2 FIRST SESSI ON, 1999

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6 FORTY- FOURTH LEGI SLATURE
7 FIRST SESSI ON, 1999
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12 March 10, 1999

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14 Mr. Presi dent:

15
16 Your JUDI CIARY COMMI TTEE, to whom has been referred

17
18 SENATE BILL 440, as amended

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21 has had it under consideration and reports same with
22 recommendation that it DO PASS.

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24 Respectfully submi tted,
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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

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Page 10

Michael S. Sanchez, Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: None

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FIRST SESSI ON, 1999

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Excused: Aragon

Absent: None

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