

SENATE BILL No. 392

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-21.5-8.

Synopsis: Dispute resolution process for state government. Allows certain governmental agencies to develop and use alternative dispute resolution procedures. Requires an agency to designate an employee of the agency to be a dispute resolution specialist. Provides that alternative dispute resolution may be used to resolve a dispute between an agency and another agency, a private entity, or a person. Provides that certain communications, notes, and records concerning the alternative dispute resolution are confidential. Provides that an agency may inform and consult with the Indiana Conflict Resolution Institute of Indiana University regarding the agency's alternative dispute resolution procedure. Provides that the governor may establish a pilot
(Continued next page)

Effective: July 1, 1998.

Simpson

January 9, 1998, read first time and referred to Committee on Judiciary.

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Digest Continued

program that assists agencies in developing, implementing, and evaluating the agency's alternative dispute resolution program. Provides that the Indiana Conflict Resolution Institute of Indiana University may provide in-kind services to the pilot program.

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Introduced

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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SENATE BILL No. 392



A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-21.5-8 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1998]:

4 **Chapter 8. Alternative Dispute Resolution**

5 **Sec. 1. As used in this chapter, "agency" has the meaning set**
6 **forth in IC 4-22-2-3.**

7 **Sec. 2. As used in this chapter, "alternative dispute resolution"**
8 **means any procedure that is used, instead of adjudication, to**
9 **resolve issues in controversy, including the following:**

- 10 (1) **Conciliation.**
- 11 (2) **Facilitation.**
- 12 (3) **Mediation.**
- 13 (4) **Fact finding.**
- 14 (5) **Minitrials.**
- 15 (6) **Arbitration.**



1 (7) The use of ombudsmen.

2 (8) Any other procedure.

3 Sec. 3. As used in this chapter, "impartial third party" means a
4 person who conducts the alternative dispute resolution, including
5 a mediator, arbitrator, facilitator, or conciliator.

6 Sec. 4. As used in this chapter, "institute" refers to the Indiana
7 Conflict Resolution Institute of Indiana University.

8 Sec. 5. As used in this chapter, "private entity" means a
9 business, a corporation, a limited liability company, or other
10 private legal entity.

11 Sec. 6. This chapter may not be applied in a manner that denies
12 a person a right granted under other state or federal law, including
13 the right to an administrative or judicial hearing.

14 Sec. 7. An agency may develop and use at least one (1)
15 alternative dispute resolution procedure.

16 Sec. 8. An alternative dispute resolution procedure developed
17 and used under this chapter:

18 (1) supplements; and

19 (2) does not limit;

20 other dispute resolution procedures available to resolve a dispute
21 with an agency, including an adjudicative proceeding under
22 IC 4-21.5.

23 Sec. 9. If a person or a private entity is entitled to resolve a
24 dispute with an agency under IC 4-21.5, the person or private
25 entity is not required to engage in alternative dispute resolution
26 under this chapter before or instead of pursuing resolution of the
27 dispute under IC 4-21.5.

28 Sec. 10. (a) An agency shall designate an employee of the agency
29 to be a dispute resolution specialist.

30 (b) A dispute resolution specialist is responsible for helping the
31 agency develop and implement alternative dispute resolution
32 procedures.

33 Sec. 11. Alternative dispute resolution may be used to resolve a
34 dispute between an agency and any of the following:

35 (1) An agency.

36 (2) A state employee.

37 (3) A person who is not a state employee.

38 (4) A private entity.

39 Sec. 12. (a) An impartial third party shall be acceptable to all
40 parties in a dispute resolution proceeding.

41 (b) An impartial third party may be any of the following:

42 (1) An officer of the state.

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1 (2) A state employee.

2 (3) A person who is not described in subdivision (1) or (2).

3 Sec. 13. (a) Except as provided in subsection (b), an impartial
4 third party may not have:

5 (1) an official;

6 (2) a financial; or

7 (3) a personal;

8 conflict of interest with respect to an issue that is the subject of the
9 alternative dispute resolution that the impartial third party is
10 engaged in.

11 (b) An impartial third party may engage in alternative dispute
12 resolution concerning an issue that the third party has a conflict of
13 interest with if:

14 (1) the interest is fully disclosed in writing to all parties; and

15 (2) all parties consent in writing that the impartial third party
16 may engage in the alternative dispute resolution procedure.

17 Sec. 14. (a) Except as provided in subsection (b) and section 13
18 of this chapter, a communication or a record of a communication
19 is confidential if the communication:

20 (1) is relevant to the dispute; and

21 (2) occurs between:

22 (A) an impartial third party and a party to the dispute; or

23 (B) the parties to the dispute;

24 during the course of an alternative dispute resolution procedure.

25 (b) A communication or record of communication described in
26 subsection (a) may be disclosed if all parties to the dispute consent
27 in writing to the disclosure.

28 Sec. 15. A written agreement:

29 (1) to which the state or an agency is a signatory; and

30 (2) that is reached as a result of a dispute resolution
31 procedure conducted under this chapter;

32 is subject to IC 5-14-3.

33 Sec. 16. (a) Except as provided in subsection (b), the notes of an
34 impartial third party are confidential.

35 (b) The notes of an impartial third party may be disclosed if:

36 (1) the notes consist of a record of a communication with a
37 party; and

38 (2) all parties have consented to the disclosure in writing.

39 Sec. 17. An impartial third party may not be required to testify
40 in any proceedings relating to or arising out of the matter in
41 dispute.

42 Sec. 18. (a) An agency that elects to use alternative dispute

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1 resolution may submit a report to the institute indicating that the
 2 agency will use alternative dispute resolution and informing the
 3 institute of the agency's dispute resolution program.

4 (b) An agency may consult with the institute in developing a
 5 policy for implementation of the agency's alternative dispute
 6 resolution program.

7 **Sec. 19. (a)** An agency may cooperate and share the results of
 8 the agency's alternative dispute resolution program with:

- 9 (1) any other agency;
 10 (2) the institute; or
 11 (3) both;

12 for the purpose of offering alternative means of dispute resolution.

13 (b) An agency may designate a coordinating agency for a
 14 cooperative program.

15 **Sec. 20. The institute may:**

- 16 (1) analyze the information received from an agency under
 17 section 18 of this chapter; and
 18 (2) submit a report of the institute's conclusions and useful
 19 information to:
 20 (A) agencies; and
 21 (B) the general assembly.

22 **SECTION 2. [EFFECTIVE JULY 1, 1998]** (a) As used in this
 23 SECTION, "agency" has the meaning set forth in IC 4-22-2-3.

24 (b) As used in this SECTION, "alternative dispute resolution"
 25 has the meaning set forth in IC 4-21.5-8-2, as added by this act.

26 (c) As used in this SECTION, "pilot program" refers to the
 27 alternative dispute resolution pilot program established under
 28 subsection (d).

29 (d) The governor may create a pilot program within the office
 30 of the governor that provides assistance to an agency in:

- 31 (1) developing;
 32 (2) implementing; and
 33 (3) evaluating;

34 an alternative dispute resolution program.

35 (e) An alternative dispute resolution program developed and
 36 implemented by an agency with the assistance of the pilot program
 37 must conform to the requirements of IC 4-21.5-8, as added by this
 38 act.

39 (f) The Indiana Conflict Resolution Institute of Indiana
 40 University may contribute in-kind services to a pilot program
 41 created under this SECTION.

42 (g) This SECTION expires July 1, 2001.



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