

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2977 Session of  
1994

INTRODUCED BY LESCOVITZ, JUNE 22, 1994

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 22, 1994

AN ACT

1 Amending Title 2 (Administrative Law and Procedure) of the  
2 Pennsylvania Consolidated Statutes, authorizing government  
3 agencies to use alternative means of dispute resolution to  
4 resolve certain issues in controversy.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Title 2 of the Pennsylvania Consolidated Statutes  
8 is amended by adding a section to read:

9 § 105.1. Administrative ADR Law.

10 The provisions of Subchapter C of Chapter 5 (relating to  
11 administrative alternative dispute resolution) shall be known  
12 and may be cited as the Administrative ADR Law.

13 Section 2. Chapter 5 of Title 2 is amended by adding a  
14 subchapter to read:

15 CHAPTER 5

16 PRACTICE AND PROCEDURE

17 \* \* \*

18 SUBCHAPTER C

ADMINISTRATIVE ALTERNATIVE DISPUTE RESOLUTION

Sec.

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§ 571. Scope of subchapter.

(a) General rule.--Except as provided in subsection (b), this subchapter shall apply to all government agencies.

(b) Exceptions.--None of the provisions of this subchapter shall apply to:

(1) Proceedings before the Department of Revenue, Auditor General or Board of Finance and Revenue, involving the original settlement, assessment or determination or resettlement, reassessment or redetermination, review or refund of taxes, interest or payments made into the State Treasury.

(2) Proceedings before the Secretary of the Commonwealth under the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code.

(3) Proceedings before the Department of Transportation

1 involving matters reviewable under 42 Pa.C.S. § 933 (relating  
2 to appeals from government agencies).

3 (4) Proceedings before the State System of Higher  
4 Education involving student discipline.

5 § 572. Declaration of policy.

6 The General Assembly hereby finds and declares that:

7 (1) Administrative proceedings are intended to offer  
8 prompt, expert and inexpensive means of resolving disputes as  
9 an alternative to litigation in the courts of this  
10 Commonwealth.

11 (2) Administrative proceedings are becoming increasingly  
12 formal, costly and lengthy and result in unnecessary  
13 expenditures of time by individuals and businesses and in a  
14 decreased likelihood of settlement of disputes.

15 (3) Alternative means of dispute resolution are used in  
16 the private sector and, in appropriate circumstances, result  
17 in decisions that are faster, less contentious and less  
18 expensive.

19 (4) Such alternative means can result in more creative,  
20 efficient and sensible outcomes especially with respect to  
21 administrative decisions impacting on business.

22 (5) Alternative means of dispute resolution may be used  
23 in a wide variety of administrative programs.

24 (6) Explicit authorization of the use of alternative  
25 means of dispute resolution will eliminate any ambiguity  
26 under existing law.

27 (7) The availability of a wide range of alternative  
28 dispute resolution procedures, and an increased understanding  
29 of the most effective use of such procedures, will enhance  
30 the operation of government and better serve both the public

1 and business.

2 § 573. Definitions.

3 The following words and phrases when used in this subchapter  
4 shall have the meanings given to them in this section unless the  
5 context clearly indicates otherwise:

6 "Alternative dispute resolution technique." Any procedure  
7 that is used instead of an adjudication to resolve issues in  
8 controversy, including, but not limited to, settlement  
9 negotiations, conciliation, facilitation, mediation, fact-  
10 finding, minitrials and arbitration, or any combination thereof.

11 "Award." Any decision by an arbitrator resolving the issues  
12 in controversy.

13 "Dispute resolution communication." Any oral or written  
14 communication prepared for the purposes of a dispute resolution  
15 proceeding, including any memoranda, notes or work product of  
16 the neutral, parties or nonparty participant, except a written  
17 agreement to enter into a dispute resolution proceeding or a  
18 final written agreement or arbitration award reached as a result  
19 of a dispute resolution proceeding.

20 "Dispute resolution proceeding" or "proceeding." Any process  
21 in which an alternative means of dispute resolution is used to  
22 resolve an issue in controversy in which a neutral is appointed  
23 and specified parties participate.

24 "Issue in controversy." An issue that is material to a  
25 decision concerning an administrative program of an agency and  
26 as to which there is disagreement between:

27 (1) an agency and a person who would be substantially  
28 affected by the decision; or

29 (2) persons who would be substantially affected by the  
30 decision.

1 "Neutral." An individual who, with respect to an issue in  
2 controversy, functions specifically to aid the parties in  
3 resolving the controversy.

4 "Party." The named parties in an administrative proceeding  
5 or a person who will be significantly affected by the decision  
6 in the administrative proceeding and who participates in the  
7 proceeding.

8 "Roster." The list maintained by the Office of General  
9 Counsel of individuals qualified to provide services as  
10 neutrals.

11 § 574. General authority.

12 (a) General rule.--A government agency may use a dispute  
13 resolution proceeding for the resolution of an issue in  
14 controversy, if all parties agree to such proceeding.

15 (b) Exceptions.--A government agency shall consider not  
16 using a dispute resolution proceeding if the matter:

17 (1) involves a situation where maintaining an  
18 established policy is of special importance, so that  
19 variations among individual decisions are not increased and  
20 such a proceeding is not likely to reach consistent results  
21 among individual decisions;

22 (2) significantly affects persons or organizations who  
23 are not parties to the proceeding;

24 (3) involves a situation where a full public record of  
25 the proceeding is important, and a dispute resolution  
26 proceeding cannot provide such a record; or

27 (4) involves a situation where the agency must maintain  
28 continuing jurisdiction over the matter with the authority to  
29 alter the disposition of the matter in light of changed  
30 circumstances, and a dispute resolution proceeding will

1       interfere with this requirement.

2       (c) Promulgation of agency policy.--In consultation with  
3 other government agencies as appropriate and with professional  
4 organizations experienced in matters concerning dispute  
5 resolution, each government agency shall adopt a policy that  
6 addresses the use of alternative dispute resolution techniques.  
7 Such professional organizations include, but are not necessarily  
8 limited to: the Pennsylvania Bar Association, the American  
9 Arbitration Association, the Pennsylvania Council of Mediators  
10 and the Society for Professionals in Dispute Resolution. In  
11 developing such a policy, each government agency shall examine  
12 alternative means of resolving disputes in connection with  
13 adjudications, rulemaking proceedings, enforcement actions,  
14 issuing and revoking permits or licenses, contract  
15 administration, litigation and other actions.

16       (d) Dispute resolution specialists.--The head of each  
17 government agency shall designate a dispute resolution  
18 specialist for the agency. The specialist shall be responsible  
19 for the implementation of the provisions of this subchapter and  
20 the agency policy developed under this subchapter.

21       (e) Training.--Each government agency shall provide for  
22 training on a regular basis for the dispute resolution  
23 specialist of the agency and other employees involved in  
24 implementing the policy of the agency. The training shall  
25 encompass the theory and practice of negotiation, mediation,  
26 arbitration or related techniques. The dispute resolution  
27 specialist may periodically recommend employees who would  
28 benefit from similar training to the agency head.

29       (f) Procedures for grants and contracts.--Each government  
30 agency shall review its standard agreements for contracts,

1 grants and other assistance and shall determine whether to amend  
2 any such standard agreement to authorize and encourage use of  
3 alternative dispute resolution techniques.

4 (g) Voluntary use.--Alternative dispute resolution  
5 techniques authorized under this subchapter are voluntary  
6 procedures which supplement rather than limit other available  
7 dispute resolution techniques.

8 § 575. Neutrals.

9 (a) Qualifications generally.--A neutral may be a permanent  
10 or temporary officer or employee of this Commonwealth or any  
11 other individual who is acceptable to the parties to a dispute  
12 resolution proceeding. A neutral shall have no official,  
13 financial or personal conflict of interest with respect to the  
14 issues in controversy, unless such interest is fully disclosed  
15 in writing to all parties and all parties agree that the neutral  
16 may serve.

17 (b) Nature of service.--A neutral who serves as a  
18 conciliator, facilitator or mediator serves at the will of the  
19 parties.

20 (c) Functions of Office of General Counsel.--The Office of  
21 General Counsel shall perform the following functions in  
22 consultation with appropriate government agencies and  
23 professional organizations experienced in matters concerning  
24 dispute resolution, including, but not limited to, those  
25 specified in section 574(c) (relating to general authority):

26 (1) Establish standards for neutrals, including  
27 experience, training, affiliations, diligence, actual or  
28 potential conflicts of interest and other qualifications, to  
29 which agencies may refer.

30 (2) Maintain a roster of individuals who meet such

standards and are otherwise qualified to act as neutrals,  
which shall be made available upon request.

(3) Enter into contracts for services of neutrals that  
may be used by government agencies on an elective basis in  
dispute resolution proceedings.

(4) Develop procedures that permit government agencies  
to obtain the services of neutrals on an expedited basis.

(d) Use of agency employees.--A government agency may use  
the services of one or more employees of other agencies to serve  
as neutrals in dispute resolution proceedings. The agencies may  
enter into an interagency agreement that provides for the  
reimbursement by the user agency or the parties of the full or  
partial cost of the services of such an employee.

(e) Contracts and compensation.--Any government agency may  
enter into a contract with any person on the roster. The parties  
in a dispute resolution proceeding shall agree on reasonable  
compensation for the neutral.

§ 576. Confidentiality.

(a) General rule.--Except as provided in subsection (b), any  
dispute resolution communication is privileged. Disclosure of  
dispute resolution communications may not be required or  
compelled through discovery or any other process. Dispute  
resolution communications shall not be admissible as evidence in  
any action or proceeding, including, but not limited to, a  
judicial, administrative or arbitration action or proceeding.

(b) Exceptions.--

(1) A settlement document may be introduced in an action  
or proceeding to enforce the settlement agreement expressed  
in the document, unless the settlement document by its terms  
states that it is unenforceable or not intended to be legally



1 binding. For purposes of this section, a settlement document  
2 is a written document signed by the parties to the agreement.

3 (2) To the extent that the dispute resolution  
4 communication is relevant evidence in a criminal matter, the  
5 privilege and limitation set forth in subsection (a) does not  
6 apply to:

7 (i) a dispute resolution communication containing a  
8 threat that bodily injury may be inflicted on a person;

9 (ii) a dispute resolution communication containing a  
10 threat that damage may be inflicted on real or personal  
11 property under circumstances constituting a felony; or

12 (iii) conduct during a dispute resolution procedure  
13 causing direct bodily injury to a person.

14 § 577. Authorization of arbitration.

15 (a) General rule.--Arbitration may be used as an alternative  
16 means of dispute resolution with the consent of all parties.  
17 Consent may be obtained either before or after an issue in  
18 controversy has arisen. A party may agree to submit only certain  
19 issues in controversy to arbitration or to arbitration on the  
20 condition that the amount of the award will be within a  
21 specified range.

22 (b) Agreement to arbitration must be voluntary.--A  
23 government agency may not require any person to consent to  
24 arbitration as a condition of entering into a contract or  
25 obtaining a benefit.

26 (c) Authority of agency employees.--An officer or employee  
27 of a government agency may offer to use arbitration for the  
28 resolution of issues in controversy, if the officer or employee  
29 has authority to enter into a settlement concerning the matter,  
30 or is otherwise specifically authorized by the agency to consent

1 to the use of arbitration.

2 § 578. Arbitrators.

3 (a) Selection.--The parties to an arbitration proceeding  
4 shall be entitled to participate in selection of the arbitrator.

5 (b) Qualifications.--The arbitrator shall be a neutral who  
6 meets the criteria of this subchapter.

7 § 579. Authority of the arbitrator.

8 An arbitrator to whom a dispute is referred under this  
9 subchapter may:

10 (1) Regulate the course of and conduct hearings.

11 (2) Administer oaths and affirmations.

12 (3) Compel the attendance of witnesses and production of  
13 evidence at the hearing, but only to the extent that the  
14 agency involved is otherwise authorized by law to do so.

15 (4) Make awards.

16 § 580. Arbitration proceedings.

17 (a) General rule.--The arbitrator shall set a time and place  
18 for the hearing on the dispute and shall notify the parties not  
19 less than 30 days before the hearing.

20 (b) Record of hearing.--Any party which would like a record  
21 of the hearing shall:

22 (1) Be responsible for the preparation of the record.

23 (2) Notify the other parties and the arbitrator of the  
24 preparation of the record.

25 (3) Furnish copies to all identified parties and the  
26 arbitrator.

27 (4) Pay all costs for the record, unless the parties  
28 agree otherwise or the arbitrator determines that the costs  
29 should be apportioned.

30 (c) Conduct of arbitration.--The following shall apply to

1 all arbitration proceedings under this subchapter:

2 (1) The parties are entitled to be heard, to present  
3 evidence relevant to the controversy and to cross-examine  
4 witnesses appearing at the hearing.

5 (2) The hearing shall be conducted expeditiously and in  
6 an informal manner.

7 (3) The arbitrator may receive oral or documentary  
8 evidence, except that irrelevant, immaterial, unduly  
9 repetitious or privileged evidence may be excluded by the  
10 arbitrator.

11 (4) The arbitrator shall interpret and apply relevant  
12 statutory and regulatory requirements.

13 (d) Ex parte communications.--A party shall not make or  
14 knowingly cause to be made any communication with the arbitrator  
15 on the party's behalf without notice unless the parties agree  
16 otherwise. If a communication is made in violation of this  
17 section, the arbitrator shall prepare a memorandum of the  
18 communication which shall become a part of the record and shall  
19 allow an opportunity for rebuttal. If the arbitrator receives a  
20 communication which violates this section, the arbitrator may,  
21 to the extent consistent with the interests of justice and  
22 policies underlying this subchapter, require the offending party  
23 to show cause why the claim of such party should not be resolved  
24 against such party as the result of the improper conduct.

25 (e) Award.--The arbitrator shall make the award within 30  
26 days after the close of the hearing, or the date of the filing  
27 of any briefs required by the arbitrator, whichever is later,  
28 unless the parties agree to some other time limit or the agency  
29 provides by regulation for some other time limit.

30 § 581. Arbitration awards.

1 (a) General rule.--Unless the government agency provides  
2 otherwise by regulation, the award in an arbitration proceeding  
3 under this subchapter shall include a brief, informal discussion  
4 of the factual and legal basis for the award, but formal  
5 findings of fact or conclusions of law shall not be required.

6 (b) Service.--The prevailing party shall file the award with  
7 all relevant agencies, along with proof of service on all  
8 parties.

9 (c) Finality.--The award in an arbitration proceeding shall  
10 become final 30 days after it is served on all parties.

11 (d) Binding nature.--A final award is binding on the parties  
12 and may be enforced as an adjudication under this title.

13 (e) Use in other proceedings.--An award entered under this  
14 subchapter in an arbitration proceeding may not serve as an  
15 estoppel in any other proceeding for any issued that was  
16 resolved in the proceeding. Such an award also may not be used  
17 as precedent or otherwise be considered in any factually  
18 unrelated proceeding, whether conducted under this subchapter,  
19 by an agency, or in a court, or in any other arbitration  
20 proceeding.

21 § 582. Judicial review.

22 (a) General rule.--Notwithstanding any other provisions of  
23 this subchapter, any party adversely affected or aggrieved by an  
24 award or order made in an arbitration or other dispute  
25 resolution proceeding conducted under this subchapter may appeal  
26 the award in accordance with Chapter 7 (relating to judicial  
27 review).

28 (b) Agency decision on use of subchapter.--A decision by an  
29 agency to use or not use a dispute resolution proceeding under  
30 this subchapter shall be a nonappealable order under Chapter 7.

1 § 583. Support services.

2 For the purposes of this subchapter, an agency may use the  
3 services or facilities of other Commonwealth agencies with the  
4 consent or agreement of the other agency.

5 Section 3. This act shall take effect in 60 days.

SOURCE NOTES

1  
2     2 Pa.C.S. § 571:   Patterned after 2 Pa.C.S. § 501.  
3     2 Pa.C.S. § 572:   Patterned after act of November 15, 1990,  
4 P.L. 101-552, § 2 (note to 5 U.S.C.S. § 571).  
5     2 Pa.C.S. § 573:   Patterned after 5 U.S.C. § 571.  
6     2 Pa.C.S. § 574:   Subsections (a) and (b) patterned after 5  
7 U.S.C. § 572(a) and (b).  
8     2 Pa.C.S. § 575:   Patterned after 5 U.S.C. § 573.  
9     2 Pa.C.S. § 576:   Patterned after 5 U.S.C. § 574. The  
10 unofficial citations for the statutes cited in subsection (j)  
11 are: Act 1957- \_\_\_\_\_, 65 P.S. § 66.1 et seq.; and Act 1984-159,  
12 35 P.S. § 7301 et seq.  
13     2 Pa.C.S. § 577:   Patterned after 5 U.S.C. § 575.  
14     2 Pa.C.S. § 578:   Patterned after 5 U.S.C. § 577.  
15     2 Pa.C.S. § 579:   Patterned after 5 U.S.C. § 578.  
16     2 Pa.C.S. § 580:   Patterned after 5 U.S.C. § 579.  
17     2 Pa.C.S. § 581:   Patterned after 5 U.S.C. § 580.  
18     2 Pa.C.S. § 582:   Patterned after 5 U.S.C. § 581.  
19     2 Pa.C.S. § 583:   Patterned after 5 U.S.C. § 583.