

Department of Planning and Budget

2002 Fiscal Impact Statement

1. Bill Number HB450

House of Origin ☐ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☒ Enrolled

2. Patron Dillard

3. Committee Passed Both Houses

4. Title Dispute resolution.

5. Summary/Purpose: This bill is designed to promote public bodies' use of alternative dispute resolution techniques rather than the courts when seeking to resolve disputes with other parties. In addition, the bill requires that state agencies, which it defines as units of state government empowered to issue regulations or decide cases, develop written policies addressing the use of dispute resolution proceedings, train any necessary employees about the implementation of such procedures, designate an existing or new employee as the agency's dispute resolution coordinator, and review their existing policies, procedures, and regulations to evaluate whether they encourage the use of the dispute resolution proceedings. If the agency's policies, procedures, and regulations do not encourage the use of dispute resolution proceedings, the bill requires that the agency amend those items so that they do encourage the use of such practices. Finally, the bill establishes an Interagency Dispute Resolution Advisory Council, which is to be composed of two dispute resolution coordinators from each secretariat, the Director of the Department of Employment Dispute Resolution, and three persons not employed by the Commonwealth, which are to be appointed by the Governor. This council is to conduct training seminars and education programs concerning dispute resolution proceedings, publish education material on the topic, and report on its activities, including recommended changes in the law, to the Governor and General Assembly.

6. Fiscal Impact is INDETERMINATE. See Item 8.

7. Budget amendment necessary: Indeterminate. This legislation has a series of discretionary and mandatory actions that could affect all state agencies (except the court system) that adopt regulations or decide cases. These actions will require staff time and other agency resources and could create situations in which state agencies could be required to hire additional staff to either review their policies and procedures or to act as an agency's dispute resolution coordinator. The extent of any agency staffing needs or their ability to absorb any cost increases is unknown at this time.

8. Fiscal implications: Although it is difficult to determine this legislation's fiscal impact with any certainty, it could result in additional costs for both the Commonwealth and its state agencies. These additional costs could include:

- the costs associated with any state agency's participation in an alternative dispute resolution proceeding;
- the costs associated with state agencies' development of written policies addressing the use of alternative dispute resolution proceedings;
- the costs of training for state employees involved in implementing these policies;

- the costs associated with reviewing state agencies' existing policies, procedures, and regulations in order to determine if those same items must be amended to encourage the use of alternative dispute resolution techniques; and
- the costs associated with the proposed Interagency Dispute Resolution Advisory Council.

Although this legislation does not require that state agencies participate in specific dispute resolution proceedings, it does require that all state agencies develop a written policy addressing the use of alternative dispute resolution proceedings, provide training to those employees involved in implementing that policy, and review their existing policies, procedures, and regulations to determine whether amendments are needed to those items to authorize and encourage the use of dispute resolution proceedings. Potentially, these requirements could increase those agencies' operating costs. For instance, the Department of Health has indicated that it might need an additional position to review that agency's numerous policies, procedures, and regulations. This position would also be responsible for acting as the dispute resolution coordinator for that agency until those activities are fully operational. Other large agencies with multiple policies, procedures, and regulations might be similarly affected. Furthermore, since all state agencies are supposed to provide training to those employees involved with implementing their alternative dispute resolution policies, agencies are likely to incur additional costs because these training courses are normally offered only for a fee by state agencies and private sector firms.

In addition, there may be instances in which the use of other agencies' staff as "neutrals" in alternative dispute resolution proceedings is inappropriate. For example, in a highly technical dispute, a state agency may be unable to locate another state employee with the policy or regulatory background necessary to serve as a "neutral" in the matter. Moreover, the other party involved in the proceeding may not agree to the use of a state employee as a "neutral" in the dispute. If such problems are encountered, state agencies may need to hire professional mediators, ombudsmen, or facilitators to assist in these proceedings. Those additional costs could be in excess of the lost productivity of the staff involved in the alternative dispute resolution proceeding.

Furthermore, there will be minor costs associated with the proposed Interagency Dispute Resolution Advisory Committee. For example, because three members of this committee are required to be persons not in the employment of the Commonwealth, these individuals will most likely be paid per diem payments to cover their necessary expenses. In addition, this committee is responsible for developing training programs and printing publications concerning alternative dispute resolution education, its activities, and recommended changes to the Code of Virginia.

Finally, it should be noted that there is a potential fiscal benefit associated with this legislation. By relying upon alternative dispute resolution proceedings, state agencies may be able to avoid more costly court-imposed solutions to their disputes with other parties. However, whether these potential savings outweigh the potential costs associated with this measure is difficult to predict.

9. Specific agency or political subdivisions affected: This bill would affect all legislative bodies, authorities, boards, bureaus, commissions, districts, political subdivisions, or agencies of the Commonwealth except the court system.

10. Technical amendment necessary: No.

11. Other comments: None.

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cc:SecretaryofAdministration