

GOVERNMENT CODE
CHAPTER 2009. ALTERNATIVE DISPUTE RESOLUTION FOR USE BY
GOVERNMENTAL BODIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2009.001. SHORT TITLE. This chapter may be cited as the Governmental Dispute Resolution Act.

Added by Acts 1997, 75th Leg., ch. 934, Sec. 1, eff. Sept. 1, 1997. Renumbered from V.T.C.A., Government Code Sec. 2008.001 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(55), eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 2008.001 by Acts 1999, 76th Leg., ch. 1352, Sec. 5, eff. Sept. 1, 1999.

Sec. 2009.002. POLICY. It is the policy of this state that disputes before governmental bodies be resolved as fairly and expeditiously as possible and that each governmental body support this policy by developing and using alternative dispute resolution procedures in appropriate aspects of the governmental body's operations and programs.

Added by Acts 1997, 75th Leg., ch. 934, Sec. 1, eff. Sept. 1, 1997. Renumbered from V.T.C.A., Government Code Sec. 2008.002 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(55), eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 2008.002 and amended by Acts 1999, 76th Leg., ch. 1352, Sec. 5, eff. Sept. 1, 1999.

Sec. 2009.003. DEFINITIONS. In this chapter:

(1) "Alternative dispute resolution procedure" includes:

(A) a procedure described by Chapter 154, Civil Practice and Remedies Code; and

(B) a combination of the procedures described by Chapter 154, Civil Practice and Remedies Code.

(2) "Governmental body" has the meaning assigned by Section 552.003.

(3) "State agency" means an officer, board, commission, department, or other agency in the executive branch of state government with statewide jurisdiction that makes rules or determines contested cases. The term includes:

(A) the attorney general;

(B) an institution of higher education as defined by Section 61.003, Education Code; and

(C) the State Office of Administrative Hearings.

(4) The following terms have the meanings assigned by Section 2001.003:

(A) "contested case";

(B) "party";

(C) "person"; and

(D) "rule."

Added by Acts 1997, 75th Leg., ch. 934, Sec. 1, eff. Sept. 1, 1997. Renumbered from V.T.C.A., Government Code Sec. 2008.003 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(55), eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 2008.003 and amended by Acts 1999, 76th Leg., ch. 1352, Sec. 5, eff. Sept. 1, 1999.

Sec. 2009.004. CONTRACTS; BUDGETING FOR COSTS. (a) A governmental body may pay for costs necessary to meet the objectives of this chapter, including reasonable fees for training, policy review, system design, evaluation, and the use of impartial third parties.

(b) To the extent allowed by the General Appropriations Act, a state agency may use money budgeted for legal services, executive administration, or any other appropriate aspect of the state agency's operations to pay for costs incurred under Subsection (a).

(c) A governmental body may contract with another governmental body, including the Center for Public Policy Dispute Resolution at The University of Texas School of Law, with an alternative dispute resolution system created under Chapter 152, Civil Practice and Remedies Code, or with a private entity for any service necessary to meet the objectives of this chapter.

Added by Acts 1997, 75th Leg., ch. 934, Sec. 1, eff. Sept. 1, 1997. Renumbered from V.T.C.A., Government Code Sec. 2008.004 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(55), eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 2008.004 and amended by Acts 1999, 76th Leg., ch. 1352, Sec. 5, eff. Sept. 1, 1999.

Sec. 2009.005. SOVEREIGN IMMUNITY. (a) This chapter does not waive immunity from suit and does not affect a waiver of immunity from suit contained in other law.

(b) The state's sovereign immunity under the Eleventh Amendment to the United States Constitution is not waived by this

chapter.

(c) Nothing in this chapter authorizes binding arbitration as a method of alternative dispute resolution.

Added by Acts 1997, 75th Leg., ch. 934, Sec. 1, eff. Sept. 1, 1997. Renumbered from V.T.C.A., Government Code Sec. 2008.005 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(55), eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 2008.005 by Acts 1999, 76th Leg., ch. 1352, Sec. 5, eff. Sept. 1, 1999.

SUBCHAPTER B. ALTERNATIVE DISPUTE RESOLUTION

Sec. 2009.051. DEVELOPMENT AND USE OF PROCEDURES. (a) Each governmental body may develop and use alternative dispute resolution procedures. Alternative dispute resolution procedures developed and used by a governmental body must be consistent with Chapter 154, Civil Practice and Remedies Code.

(b) Alternative dispute resolution procedures developed and used by a state agency also must be consistent with the administrative procedure law, Chapter 2001. The State Office of Administrative Hearings may issue model guidelines for the use of alternative dispute resolution procedures by state agencies.

(c) If a state agency that is subject to Chapter 2001 adopts an alternative dispute resolution procedure, it may do so by rule.

Added by Acts 1997, 75th Leg., ch. 934, Sec. 1, eff. Sept. 1, 1997. Renumbered from V.T.C.A., Government Code Sec. 2008.051 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(55), eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 2008.051 and amended by Acts 1999, 76th Leg., ch. 1352, Sec. 5, eff. Sept. 1, 1999.

Sec. 2009.052. SUPPLEMENTAL NATURE OF PROCEDURES. (a) Alternative dispute resolution procedures developed and used under this chapter supplement and do not limit other dispute resolution procedures available for use by a governmental body.

(b) This chapter may not be applied in a manner that denies a person a right granted under other state or federal law or under a local charter, ordinance, or other similar provision, including a right to an administrative or judicial hearing.

Added by Acts 1997, 75th Leg., ch. 934, Sec. 1, eff. Sept. 1, 1997. Renumbered from V.T.C.A., Government Code Sec. 2008.052 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(55), eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 2008.052 and amended by Acts 1999, 76th Leg., ch. 1352, Sec. 5, eff. Sept. 1, 1999.

Sec. 2009.053. IMPARTIAL THIRD PARTIES. (a) A governmental body may appoint a governmental officer or employee or a private individual to serve as an impartial third party in an alternative dispute resolution procedure. The governmental body's appointment of the impartial third party is subject to the approval of the parties, except:

(1) that when a State Office of Administrative Hearings administrative law judge has issued an order referring a case involving a state agency to an alternative dispute resolution procedure under Section 2003.042(a)(5), the administrative law judge may appoint the impartial third party for the parties if they cannot agree on an impartial third party within a reasonable period; or

(2) for a victim-offender mediation by the Texas Department of Criminal Justice as described in Article 56.13, Code of Criminal Procedure.

(b) A governmental body also may obtain the services of a qualified impartial third party through an agreement with the Center for Public Policy Dispute Resolution at The University of Texas School of Law, an alternative dispute resolution system created under Chapter 152, Civil Practice and Remedies Code, another governmental body, or a federal agency or through a pooling agreement with several governmental bodies. The agreements may provide that the using governmental body or the parties will reimburse the furnishing entity, in kind or monetarily, for the full or partial cost of providing the qualified impartial third party.

(c) A state agency may also obtain the services of a qualified third party through an agreement with the State Office of Administrative Hearings.

(d) The impartial third party must possess the qualifications required under Section 154.052, Civil Practice and Remedies Code. The impartial third party is subject to the standards and duties prescribed by Section 154.053, Civil Practice and Remedies Code, and has the qualified immunity prescribed by Section 154.055, Civil Practice and Remedies Code, if applicable.

Added by Acts 1997, 75th Leg., ch. 934, Sec. 1, eff. Sept. 1, 1997. Renumbered from V.T.C.A., Government Code Sec. 2008.053 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(55), eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 2008.053 and amended by Acts 1999, 76th Leg., ch. 1352, Sec. 5, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1034, Sec. 11, eff. Sept. 1, 2001.

Sec. 2009.054. CONFIDENTIALITY OF CERTAIN RECORDS AND COMMUNICATIONS. (a) Sections 154.053 and 154.073, Civil Practice and Remedies Code, apply to the communications, records, conduct, and demeanor of the impartial third party and the parties.

(b) Notwithstanding Section 154.073(e), Civil Practice and Remedies Code:

(1) a communication relevant to the dispute, and a record of the communication, made between an impartial third party and the parties to the dispute or between the parties to the dispute during the course of an alternative dispute resolution procedure are confidential and may not be disclosed unless all parties to the dispute consent to the disclosure; and

(2) the notes of an impartial third party are confidential except to the extent that the notes consist of a record of a communication with a party and all parties have consented to disclosure in accordance with Subdivision (1).

(c) Subsection (b)(1) does not apply to a final written agreement to which a governmental body is a signatory that is reached as a result of a dispute resolution procedure conducted under this chapter. Information in the final written agreement is subject to required disclosure, is excepted from required disclosure, or is confidential in accordance with Chapter 552 and other law.

(d) An impartial third party may not be required to testify in any proceedings relating to or arising out of the matter in dispute.

Added by Acts 1997, 75th Leg., ch. 934, Sec. 1, eff. Sept. 1, 1997. Renumbered from V.T.C.A., Government Code Sec. 2008.054 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(55), eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 2008.054 and amended by Acts 1999, 76th Leg., ch. 1352, Sec. 5, eff. Sept. 1, 1999.

Sec. 2009.055. SHARING OF INFORMATION; CONSISTENCY OF PROCEDURES. (a) A governmental body may share the results of its alternative dispute resolution program with other governmental bodies and with the Center for Public Policy Dispute Resolution at The University of Texas School of Law. The center may collect and analyze the information and report its conclusions and useful information to governmental bodies and the legislature.

(b) Governmental bodies should, to the extent feasible given differences in their purpose, jurisdiction, and constituency, adopt policies and procedures for alternative dispute resolution that are consistent with the policies and procedures of other governmental bodies.

Added by Acts 1997, 75th Leg., ch. 934, Sec. 1, eff. Sept. 1, 1997. Renumbered from V.T.C.A., Government Code Sec. 2008.055 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(55), eff. Sept. 1, 1999. Renumbered from V.T.C.A., Government Code Sec. 2008.055 and amended by Acts 1999, 76th Leg., ch. 1352, Sec. 5, eff. Sept. 1, 1999.