

FLORIDA EXECUTIVE ORDER NUMBER 02-87

Requiring state agencies to assess their DR use and appoint a DR coordinator

WHEREAS, this Administration is committed to ensuring that, in fulfilling the mission of state government, the executive agencies use the most efficient and effective means to resolve administrative disputes; and

WHEREAS, to be effective in addressing the wide array of issues they face, agencies should employ a variety of strategies and problem solving tools; and

WHEREAS, alternative dispute resolution (ADR) methods enable resolution of disputes in a collaborative, cost-efficient manner; and

WHEREAS, ADR has proven to be effective in resolving and preventing public and private conflicts; and

WHEREAS, the Florida Legislature has enacted section 120.54(2)(d)1, Florida Statutes, authorizing executive agencies to use negotiated rulemaking in developing and adopting rules where the rules being drafted are complex or are likely to receive strong opposition; and

WHEREAS, the Florida Legislature has enacted section 120.573, Florida Statutes, authorizing executive agencies to mediate challenges to agency action that otherwise would be resolved in an administrative hearing under Chapter 120, Florida Statutes;

WHEREAS, ADR techniques can be used to resolve permitting, procurement, contract, and other disputes prior to parties initiating administrative or judicial proceedings;

NOW, THEREFORE, I, JEB BUSH, Governor of the State of Florida, in obedience to my solemn constitutional duty to take care that the laws be faithfully executed, and pursuant to the Constitution and laws of the State of Florida, do hereby promulgate the following Executive

Section 1.

Each executive agency Secretary shall:

- a) review the agency's processes for managing conflicts and controversies to ensure that its dispute resolution and conflict management processes are efficient and effective;
- b) determine whether those systems could be improved through the use of facilitation, mediation, negotiated rulemaking, and/or other ADR processes; and
- c) take the necessary steps to implement those improvements.

Section 2.

Each executive agency Secretary shall designate an agency ADR Coordinator to assist the Secretary in accomplishing the directives set forth above. The ADR Coordinator shall:

- a) acquire and maintain general knowledge of ADR processes and the dispute resolution processes employed by the agency;
- b) determine where and how ADR might be applied in the agency to increase efficiency in resolving disputes, decrease the costs of resolving disputes, and increase public and agency satisfaction with the process and results of agency dispute resolution activities;
- c) provide leadership and encouragement for integrating ADR in agency practices, including: engaging key agency staff in crafting ADR policies and programs; addressing barriers to ADR use and identifying incentives to overcome them; and serving as a resource to build understanding and capacity through education and training; and
- d) submit any proposed agency policies and/or procedures regarding use of ADR to the Governor's general counsel's office for review to ensure consistency and compliance with the Uniform Rules of Administrative Procedure.

Section 3.

On or before September 1, 2002, each executive agency shall submit to the Governor an Agency ADR Needs Assessment and Plan, prepared by the agency ADR Coordinator and reviewed by the Secretary, which shall include:

- a) a description of the nature and number of disputes and controversies arising under Chapter 120, Florida Statutes, that the agency is involved in (including, but not limited to, rule challenges, challenges to agency action, and bid protests), and current dispute resolution systems for managing those disputes;
- b) an assessment of the agency's historical use of negotiated rulemaking under section 120.54(2)(d)(1), Florida Statutes;
- c) an assessment of the agency's historical use of mediation under section 120.573, Florida Statutes, and an assessment of the agency's compliance with the notice requirements of section 120.573;
- d) identification of disputes in which the agency is involved or which commonly arise that would lend themselves to resolution by ADR, and a description of the process used to identify those disputes;
- e) an initial plan, including program goals, objectives, timetables, implementation and evaluation, to address those disputes utilizing ADR techniques;
- f) a summary or description of the policies and/or procedures the agency employs, or will employ, to ensure that ADR is an available and effective dispute resolution option;
- g) an assessment of ADR training needs for agency staff and a strategy for meeting those needs; and
- h) identification of where, within the agency's budget, funding is available to adequately meet agency ADR plan objectives.

Beginning December 1, 2002, each executive agency shall submit to the Governor an Annual Agency ADR Report, prepared by the agency ADR Coordinator and reviewed by the Secretary, which shall include information for the previous fiscal year on:

- a) agency utilization of ADR;
- b) the effectiveness of agency ADR processes;
- c) ADR training received by agency employees;
- d) implementation of any new ADR programs or projects;
- e) the status of any activities or actions proposed in the agency's ADR Plan; and
- f) the goals for improving agency ADR programs in the next fiscal year.

Section 4.

This executive order shall expire on December 31, 2002, unless extended by amendment.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed at Tallahassee, the Capitol, this 20th day of March, 2002.

Jeb Bush
Governor