GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 986*

Short Title: Office of Administrative Hearings Mediation Program. (Public)

Sponsors: Senator Cooper.

Referred to: Judiciary II.

April 28, 1993

1   A BILL TO BE ENTITLED
2   AN ACT TO AUTHORIZE A MEDIATION PROGRAM FOR THE OFFICE OF
3   ADMINISTRATIVE HEARINGS.
4   The General Assembly of North Carolina enacts:
5   Section 1. Chapter 150B of the General Statutes is amended by adding the
6   following section to read:
7   "**§ 150B-23.1. Mediated settlement conferences.**
8   (a)   Purpose. – This section authorizes a mediation program in the Office of
9   Administrative Hearings in which an administrative law judge may require the parties in
10 a contested case to attend a prehearing settlement conference conducted by a mediator.
11 The purpose of the program is to determine whether a system of mediated settlement
12 conferences may make the operation of the Office of Administrative Hearings more
13 efficient, less costly, and more satisfying to the parties.
14   (b)   Definitions. – The following definitions apply in this section:
15   (1)   Mediated settlement conference. – A conference ordered by an
16   administrative law judge involving the parties to a contested case and
17   conducted by a mediator prior to a contested case hearing.
18   (2)   Mediator. – A neutral person who acts to encourage and facilitate a
19   resolution of a contested case but who does not make a decision on the
20   merits of the contested case.
21   (c)   Conference. – An administrative law judge may order a mediated settlement
22 conference for all or any part of a contested case to which the administrative law judge
23 is assigned. All aspects of the mediated settlement conference shall be conducted in so

1 far as possible in accordance with the rules adopted by the Supreme Court for the court-
2 ordered mediation pilot program under G.S. 7A-38.
3   (d)   Attendance. – The parties to a contested case in which a mediated settlement
4 conference is ordered, their attorneys, and other persons having authority to settle the
5 parties' claims shall attend the settlement conference unless excused by the
6 administrative law judge.
7   (e)   Mediator. – The parties shall have the right to stipulate to a mediator. Upon
8 the failure of the parties to agree within a time limit established by the administrative
9 law judge, a mediator shall be appointed by the administrative law judge.
10   (f)   Sanctions. – Upon failure of a party or a party's attorney to attend a mediated
11 settlement conference ordered under this section, an administrative law judge may
12 impose any sanction authorized by G.S. 150B-33(b)(8) or (10).
13   (g)   Standards. – Mediators authorized to conduct mediated settlement
14 conferences under this section shall comply with the standards adopted by the Supreme
15 Court for the court-ordered mediation pilot program under G.S. 7A-38.
16   (h)   Immunity. – A mediator acting pursuant to this section shall have judicial
17 immunity in the same manner and to the same extent as a judge of the General Court of
18 Justice.
19   (i)   Costs. – Costs of a mediated settlement conference shall be paid one share by
20 the petitioner, one share by the respondent, and an equal share by any intervenor, unless
21 otherwise apportioned by the administrative law judge.
22   (j)   Inadmissibility of Negotiations. – All conduct or communications made
23 during a mediated settlement conference are presumed to be made in compromise
24 negotiations and shall be governed by Rule 408 of the North Carolina Rules of
25 Evidence.
26   (k)   Right to Hearing. – Nothing in this section restricts the right to a contested
27 case hearing."
28   Sec. 2. The mediation program authorized by this act shall be evaluated
29 under the direction of the Attorney General, who shall file a written report on the
30 evaluation of the program on or before May 1, 1995. One copy of the report shall be
31 sent to the Speaker of the House of Representatives, one copy shall be sent to the
32 President Pro Tempore of the Senate, and five copies shall be sent to the Legislative
33 Services Commission for placement in the Legislative Library.
34   Sec. 3. This act becomes effective October 1, 1993, and expires June 30,
35 1995. It applies to contested cases pending on or commenced after the effective date.