

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 986*
Judiciary II Committee Substitute Adopted 5/11/93

Short Title: OAH Mediation Program.

(Public)

Sponsors:

Referred to:

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 the chief administrative law judge may require the
10 parties in a contested case to attend a prehearing settlement conference conducted by a
11 mediator. The purpose of the program is to determine whether a system of mediated
12 settlement conferences may make the operation of the Office of Administrative
13 Hearings more 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 the chief
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. – The chief administrative law judge may order a mediated
22 settlement conference for all or any part of a contested case to which an administrative
23 law judge is assigned to preside. All aspects of the mediated settlement conference

1 shall be conducted in so far as possible in accordance with the rules adopted by the
2 Supreme Court for the court-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 presiding
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 presiding
9 administrative law judge, a mediator shall be appointed by the presiding administrative
10 law judge.

11 (f) Sanctions. – Upon failure of a party or a party's attorney to attend a mediated
12 settlement conference ordered under this section, the presiding administrative law judge
13 may impose any sanction authorized by G.S. 150B-33(b)(8) or (10).

14 (g) Standards. – Mediators authorized to conduct mediated settlement
15 conferences under this section shall comply with the standards adopted by the Supreme
16 Court for the court-ordered mediation pilot program under G.S. 7A-38.

17 (h) Immunity. – A mediator acting pursuant to this section shall have judicial
18 immunity in the same manner and to the same extent as a judge of the General Court of
19 Justice.

20 (i) Costs. – Costs of a mediated settlement conference shall be paid one share by
21 the petitioner, one share by the respondent, and an equal share by any intervenor, unless
22 otherwise apportioned by the administrative law judge.

23 (j) Inadmissibility of Negotiations. – All conduct or communications made
24 during a mediated settlement conference are presumed to be made in compromise
25 negotiations and shall be governed by Rule 408 of the North Carolina Rules of
26 Evidence.

27 (k) Right to Hearing. – Nothing in this section restricts the right to a contested
28 case hearing."

29 Sec. 2. The mediation program authorized by this act shall be evaluated
30 under the direction of the Attorney General, who shall file a written report on the
31 evaluation of the program on or before May 1, 1995. One copy of the report shall be
32 sent to the Speaker of the House of Representatives, one copy shall be sent to the
33 President Pro Tempore of the Senate, and five copies shall be sent to the Legislative
34 Services Commission for placement in the Legislative Library.

35 Sec. 3. This act becomes effective October 1, 1993, and expires June 30,
36 1995. It applies to contested cases pending on or commenced after the effective date.