

Senate Bill 904

Sponsored by JOINT COMMITTEE ON WAYS AND MEANS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Abolishes Dispute Resolution Commission. Transfers some functions of commission to Attorney General.

Declares emergency, effective _____.

A BILL FOR AN ACT

1
2 Relating to dispute resolution; creating new provisions; amending ORS 21.480, 36.105, 36.110, 36.135,
3 36.140, 36.145, 36.150, 36.155, 36.160, 36.165, 36.175, 36.185, 36.200, 36.210, 36.224, 107.755, 107.775,
4 135.959, 183.502, 197.830, 339.333 and 390.240; repealing ORS 36.115, 36.120, 36.125, 36.130, 36.180
5 and 36.245; appropriating money; and declaring an emergency.

6 **Be It Enacted by the People of the State of Oregon:**

7 **SECTION 1. (1) The duties, functions and powers of the Dispute Resolution Commission**
8 **are imposed upon, transferred to and vested in the Attorney General.**

9 **(2) The director of the of the Dispute Resolution Commission shall deliver to the Attor-**
10 **ney General all records and property within the jurisdiction of the director that relate to the**
11 **duties, functions and powers transferred by section 1 of this 2003 Act.**

12 **SECTION 2. (1) The transfer of duties, functions and powers to the Attorney General by**
13 **section 1 of this 2003 Act does not affect any action, proceeding or prosecution involving or**
14 **with respect to such duties, functions and powers begun before and pending at the time of**
15 **the transfer, except that the Receiving Agency is substituted for the Attorney General in the**
16 **action, proceeding or prosecution.**

17 **(2) Nothing in this 2003 Act relieves a person of a liability, duty or obligation accruing**
18 **under or with respect to the duties, functions and powers transferred by section 1 of this**
19 **2003 Act. The Attorney General may undertake the collection or enforcement of any such**
20 **liability, duty or obligation.**

21 **(3) The rights and obligations of the Dispute Resolution Commission legally incurred un-**
22 **der contracts, leases and business transactions executed, entered into or begun before the**
23 **operative date of section 1 of this 2003 Act accruing under or with respect to the duties,**
24 **functions and powers transferred by section 1 of this 2003 Act are transferred to the Attor-**
25 **ney General. For the purpose of succession to these rights and obligations, the Attorney**
26 **General is a continuation of the Dispute Resolution Commission and not a new authority.**

27 **SECTION 3. Notwithstanding the transfer of duties, functions and powers by section 1**
28 **of this 2003 Act, the rules of the Dispute Resolution Commission with respect to such duties,**
29 **functions or powers that are in effect on the operative date of section 1 of this 2003 Act**
30 **continue in effect until superseded or repealed by rules of the Attorney General. References**
31 **in such rules of the Dispute Resolution Commission to the Dispute Resolution Commission**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 or an officer or employee of the Dispute Resolution Commission are considered to be refer-
 2 ences to the Attorney General or an officer or employee of the Attorney General.

3 **SECTION 4.** Whenever, in any uncodified law or resolution of the Legislative Assembly
 4 or in any rule, document, record or proceeding authorized by the Legislative Assembly, in
 5 the context of the duties, functions and powers transferred by section 1 of this 2003 Act,
 6 reference is made to the Dispute Resolution Commission, or an officer or employee of the
 7 Dispute Resolution Commission, whose duties, functions or powers are transferred by section
 8 1 of this 2003 Act, the reference is considered to be a reference to the Attorney General or
 9 an officer or employee of the Attorney General who by this 2003 Act is charged with carrying
 10 out such duties, functions and powers.

11 **SECTION 5.** ORS 21.480 is amended to read:

12 21.480. (1) In all counties wherein legal representation is provided for the poor without fee by
 13 a nonprofit legal aid program operating under the Legal Services Program established pursuant to
 14 ORS 9.572, the clerk of the circuit court shall collect the fees provided for in this section to assist
 15 in defraying the operating costs of the legal aid program and to fund mediation programs offered
 16 through the State Department of Agriculture. The fees provided for in this section are in addition
 17 to all other fees collected by the clerk of the court, and shall be collected by the clerk in the same
 18 manner that other fees are collected by the clerk.

19 (2) The clerk shall collect the following fees from the plaintiff or other moving party in each
 20 civil suit, action or proceeding in the circuit court when the plaintiff or party files the first paper
 21 in the suit, action or proceeding, and from a defendant or respondent when the defendant or re-
 22 spondent files an appearance in the suit, action or proceeding:

23 (a) \$7, for filings in the small claims department of a circuit court.

24 (b) \$13, upon the filing of a complaint that is subject to the filing fee established under ORS
 25 105.130 (2). If the defendant demands a trial, the clerk shall collect a fee of \$28 from the defendant,
 26 and an additional fee of \$15 from the plaintiff. In no event shall the plaintiff in an action subject to
 27 the filing fee established under ORS 105.130 be required to pay a total fee of more than \$28 under
 28 the provisions of this subsection.

29 (c) \$24, if the action, suit or proceeding is subject to the filing fees established by ORS 21.111.

30 (d) \$22, if the action, suit or proceeding is subject to the filing fees established by ORS 21.110
 31 (2).

32 (e) \$28, for any other filings in a circuit court not specifically provided for in this subsection,
 33 including all probate proceedings, protective proceedings under ORS chapter 125, adoption pro-
 34 ceedings and change of name proceedings.

35 (3) All fees collected under this section shall be deposited with the State Court Administrator
 36 in the manner provided by ORS 9.574.

37 (4) Ten percent of the funds deposited with the State Court Administrator under this section
 38 shall be transferred by the State Court Administrator on a monthly basis to the State Department
 39 of Agriculture, until such time as the amount specified under subsection (5) of this section has been
 40 transferred to the State Department of Agriculture for the biennium. Moneys transferred to the
 41 State Department of Agriculture under this section are continuously appropriated to the department
 42 and may be used by the department only for the purpose of funding mediation programs established
 43 by the department. Moneys appropriated to the department under this subsection may not be used
 44 by the department to fund the costs of conducting individual farm credit mediations. The department
 45 shall consult with the [*Dispute Resolution Commission*] **Attorney General** in establishing and oper-

ating mediation programs funded under this subsection.

(5) The amount transferred by the State Court Administrator to the State Department of Agriculture under subsection (4) of this section shall not exceed:

- (a) \$80,000 in the 1997-1999 biennium; and
- (b) \$100,000 in all biennia after the 1997-1999 biennium.

SECTION 6. ORS 36.105 is amended to read:

36.105. The Legislative Assembly declares that it is the purpose of ORS 36.100 to 36.245 to:

(1) Foster the development of community-based programs that will assist citizens in resolving disputes and developing skills in conflict resolution;

(2) Allow flexible and diverse programs to be developed in this state, to meet specific needs in local areas and to benefit this state as a whole through experiments using a variety of models of peaceful dispute resolution;

(3) Find alternative methods for addressing the needs of crime victims in criminal cases when those cases are either not prosecuted for lack of funds or can be more efficiently handled outside the courts;

(4) Provide a method to evaluate the effect of dispute resolution programs on communities, local governments, the justice system and state agencies; **and**

(5) Encourage the development and use of mediation panels for resolution of civil litigation disputes[;].

[(6) Foster the development or expansion of integrated, flexible and diverse state agency programs that involve state and local agencies and the public and that provide for use of alternative means of dispute resolution pursuant to ORS 183.502; and]

[(7) Foster efforts to integrate community, judicial and state agency dispute resolution programs.]

SECTION 7. ORS 36.110 is amended to read:

36.110. As used in ORS 36.100 to 36.245:

(1) "Arbitration" means any arbitration whether or not administered by a permanent arbitral institution.

[(2) "Commission" means the Dispute Resolution Commission created under ORS 36.115.]

[(3) "Director" means the director appointed by the Dispute Resolution Commission under ORS 36.130.]

[(4)] (2) "Dispute resolution services" includes but is not limited to mediation, conciliation and arbitration.

[(5)] (3) "Dispute resolution program" means an entity that receives state funds **under ORS 36.155** to provide dispute resolution services.

[(6)] (4) "Mediation" means a process in which a mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between a mediator and any party or agent of a party, until such time as a resolution is agreed to by the parties or the mediation process is terminated.

[(7)] (5) "Mediation agreement" means an agreement arising out of a mediation, including any term or condition of the agreement.

[(8)] (6) "Mediation communications" means:

(a) All communications that are made, in the course of or in connection with a mediation, to a mediator, a mediation program or a party to, or any other person present at, the mediation proceedings; and

(b) All memoranda, work products, documents and other materials, including any draft mediation

1 agreement, that are prepared for or submitted in the course of or in connection with a mediation
 2 or by a mediator, a mediation program or a party to, or any other person present at, mediation
 3 proceedings.

4 [(9)] (7) “Mediation program” means a program through which mediation is made available and
 5 includes the director, agents and employees of the program.

6 [(10)] (8) “Mediator” means a third party who performs mediation. “Mediator” includes agents
 7 and employees of the mediator or mediation program and any judge conducting a case settlement
 8 conference.

9 [(11)] (9) “Public body” means any state agency, county or city governing body, school district,
 10 special district, municipal corporation, any board, department, commission, council, or agency
 11 thereof, and any other public agency of this state.

12 [(12)] (10) “State agency” means any state officer, board, commission, bureau, department, or
 13 division thereof, in the executive branch of state government.

14 **SECTION 8.** ORS 36.135 is amended to read:

15 36.135. [(1) *The director of the Dispute Resolution Commission*] **The Attorney General** shall pe-
 16 riodically review dispute resolution programs in this state. If the [director] **Attorney General** de-
 17 termines that there are reasonable grounds to believe that a program is not in substantial
 18 compliance with the standards and guidelines adopted under ORS 36.175, the [director shall negotiate
 19 with the manager of the program to bring the program into compliance with the standards and guide-
 20 lines] **Attorney General may suspend or terminate the funding of the program and recover**
 21 **any unexpended funds or improperly expended funds from the program.**

22 [(2) *If the negotiations under subsection (1) of this section fail, the director shall give written notice*
 23 *to the program and the county requiring the program to be revised to comply with the standards and*
 24 *guidelines within 30 days after the notice. If, after 30 days, the director concludes that the program is*
 25 *not in compliance, the director shall serve the manager of the program with a request for mediation.*
 26 *The director and the program manager shall mutually select a mediator. If a mediator is not selected*
 27 *within 15 days, the director shall request the presiding judge for the judicial district in which the*
 28 *program is located to appoint a mediator.*]

29 [(3) *If mediation under subsection (2) of this section fails, the director shall, after giving the pro-*
 30 *gram and county not less than 30 days’ notice, conduct a hearing to ascertain whether there is sub-*
 31 *stantial compliance or satisfactory progress being made toward compliance. After the hearing, the*
 32 *Dispute Resolution Commission may suspend funding of the program until the required compliance*
 33 *occurs.*]

34 **SECTION 9.** ORS 36.140 is amended to read:

35 36.140. (1) To aid and advise the [*Dispute Resolution Commission in the performance of its func-*
 36 *tions*] **Attorney General on dispute resolution programs**, the [commission] **Attorney General**
 37 may establish such advisory and technical committees as [it] **the Attorney General** considers nec-
 38 essary. These committees may be continuing or temporary. The [commission] **Attorney General**
 39 shall determine the representation, membership, terms and organization of the committee and shall
 40 appoint their members.

41 (2) Members of these committees are not entitled to compensation [*but, in the discretion of the*
 42 *commission, may be reimbursed from funds available to the commission for actual and necessary travel*
 43 *and other expenses incurred in the performance of official duties, subject to ORS 292.495*] **or re-**
 44 **imbursement for any expenses.**

45 **SECTION 10.** ORS 36.145 is amended to read:

1 36.145. (1) The Dispute Resolution Account is established in the State Treasury, separate and
2 distinct from the General Fund. All moneys received by the [*Dispute Resolution Commission*] **At-**
3 **torney General** under ORS 36.150 and 36.170 shall be deposited to the credit of the account. Mon-
4 eys in the account are continuously appropriated to the [*commission to carry out the provisions of*
5 *ORS 36.100 to 36.245*] **Department of Revenue to be distributed according to allocations made**
6 **by the Legislative Assembly to:**

7 (a) **The Attorney General, for the purpose of distribution under ORS 36.155 and payment**
8 **of administrative expenses of the Attorney General in carrying out the responsibilities of the**
9 **Attorney General under ORS 35.100 to 36.245;**

10 (b) **The Attorney General, for the purpose of carrying out the provisions of ORS 183.502**
11 **(5) to (7); and**

12 (c) **The Judicial Department, for the purpose of providing mediation and arbitration ser-**
13 **vices in the courts of this state.**

14 (2) **Notwithstanding ORS 293.190, moneys in the Dispute Resolution Account that are in**
15 **excess of the distributions required by this section do not revert to the General Fund but**
16 **remain in the account and are available for future allocation under this section.**

17 **SECTION 11.** For the biennium beginning on July 1, 2003, the Department of Revenue
18 shall distribute from the Dispute Resolution Account the following amounts:

19 (1) \$_____ to the Attorney General, for the purpose of distribution under ORS 36.155
20 and payment of administrative expenses of the Attorney General in carrying out the re-
21 sponsibilities of the Attorney General under ORS 35.100 to 36.245;

22 (2) \$_____ to the Attorney General, for the purpose of carrying out the provisions of
23 ORS 183.502 (5) to (7); and

24 (3) \$_____ to the Judicial Department, for the purpose of providing mediation and ar-
25 bitration services in the courts of this state.

26 **SECTION 12.** ORS 36.150 is amended to read:

27 36.150. The [*Dispute Resolution Commission*] **Attorney General** may accept and expend moneys
28 from any public or private source, including the federal government, made available for the purpose
29 of encouraging, promoting or establishing dispute resolution programs in Oregon or to facilitate and
30 assist the [*commission*] **Attorney General** in carrying out the [*commission's function as provided by*
31 *law*] **responsibilities of the Attorney General under ORS 36.100 to 36.245 and 183.502.** All mon-
32 eys received by the [*commission*] **Attorney General** under this section shall be deposited in the
33 Dispute Resolution Account. Notwithstanding the provisions of ORS 291.238, all such moneys are
34 continuously appropriated to the [*commission*] **Attorney General** for the purposes for which they
35 were made available and shall be expended in accordance with the terms and conditions upon which
36 they were made available.

37 **SECTION 13.** ORS 36.155 is amended to read:

38 36.155. [(1) *Funds in the Dispute Resolution Account attributable to 30 percent of the amounts*
39 *generated by the filing fee surcharges imposed under ORS 36.170 may be used by the Dispute Resol-*
40 *ution Commission only for the purpose of carrying out the provisions of ORS 36.100 to 36.245. Funds*
41 *in the Dispute Resolution Account attributable to 20 percent of the amounts generated by the filing fee*
42 *surcharges imposed under ORS 36.170 may be used by the Dispute Resolution Commission only for the*
43 *purpose of carrying out the provisions of ORS 183.502 (5) to (7). Funds in the Dispute Resolution*
44 *Account attributable to 50 percent of the amounts generated by the filing fee surcharges imposed under*
45 *ORS 36.170 shall be allocated as provided in subsection (2) of this section.*]

1 [(2)] (1) *[Funds in the Dispute Resolution Account that are attributable to 50 percent of the*
 2 *amounts generated by the filing fee surcharges imposed under ORS 36.170]* **Funds allocated to the**
 3 **Attorney General under ORS 36.145 (1)(a) for distribution under this section** shall be awarded
 4 by the *[commission]* **Attorney General** for the purpose of providing dispute resolution services in
 5 the county from which the funds originated. On or before July 1 of each odd-numbered year, the
 6 *[commission]* **Attorney General** shall advise each county of the county's share of the amount *[ap-*
 7 *propriated]* **allocated** for the purposes of this subsection. The determination shall be based upon
 8 each county's respective share of moneys contributed under ORS 36.170. Before *[allocating]* **dis-**
 9 **tributing** these funds in a county, the county must apply for authority or the commission must
 10 proceed under ORS 36.160. If a dispute resolution program is not selected for funding under ORS
 11 36.160 within three fiscal years after the fiscal year in which the filing fee surcharge was collected,
 12 then the funds from that fiscal year may be spent by the commission *[for dispute resolution services*
 13 *as if the funds were moneys governed by subsection (3) of this section]* **in other counties.**

14 [(3)] (2) Moneys received by the *[commission from any sources other than the filing fee surcharges*
 15 *imposed by ORS 36.170]* **Attorney General under ORS 36.150** shall be used as follows:

16 (a) For overhead and administrative expenses of the *[commission]* **Attorney General related**
 17 **to the responsibilities of the Attorney General under ORS 36.100 to 36.245 and 183.502.**

18 (b) For statewide dispute resolution programs or dispute resolution services in any county in
 19 this state including but not limited to providing special grants for pilot projects, start-up costs for
 20 dispute resolution programs and training programs and to supplement funds otherwise received by
 21 dispute resolution programs.

22 **SECTION 14.** ORS 36.160 is amended to read:

23 36.160. (1) To participate in the expenditure of funds for dispute resolution programs within the
 24 county under ORS 36.155, a county shall notify the *[Dispute Resolution Commission]* **Attorney**
 25 **General** in accordance with the schedule established by rule by the *[commission]* **Attorney**
 26 **General**. Such notification shall be by resolution of the appropriate board of county commissioners
 27 or, if the programs are to serve more than one county, by joint resolution. A county providing notice
 28 may select the dispute resolution programs to receive funds under ORS 36.155 for providing dispute
 29 resolution services within the county from among qualified dispute resolution programs.

30 (2) The county's notification to the *[commission shall]* **Attorney General must** include a state-
 31 ment of agreement by the county to engage in a selection process and to select as the recipient of
 32 funding an entity capable of and willing to provide dispute resolution services according to the rules
 33 of the *[commission]* **Attorney General**. Actual funding by the *[commission shall be]* **Attorney Gen-**
 34 **eral is** contingent upon the selection by the county of a qualified entity. The *[commission shall]*
 35 **Attorney General may** provide consultation and technical assistance to a county to identify, de-
 36 velop and implement dispute resolution programs that meet the standards and guidelines adopted
 37 by the *[commission]* **Attorney General** under ORS 36.175.

38 (3) If a county does not issue a notification according to the schedule established by the *[com-*
 39 *mission]* **Attorney General**, the *[Dispute Resolution Commission]* **Attorney General** may notify a
 40 county board of commissioners that the *[commission]* **Attorney General** intends to fund a dispute
 41 resolution program in the county with funds earmarked for the county under ORS 36.155. The *[Dis-*
 42 *pute Resolution Commission]* **Attorney General** may, after such notification, assume the county's
 43 role under subsection (1) of this section unless the county gives the notice required by subsection
 44 (1) of this section. If the *[commission]* **Attorney General** assumes the county's role, the
 45 *[commission]* **Attorney General** may contract with a qualified program for a two-year period. The

1 county may, 90 days before the expiration of an agreement between a qualified program and the
 2 [commission] **Attorney General**, notify the [Dispute Resolution Commission] **Attorney General** un-
 3 der subsection (1) of this section that the county intends to assume its role under subsection (1) of
 4 this section.

5 (4) All dispute resolution programs identified for funding shall comply with the rules adopted
 6 under ORS 36.175.

7 (5) All funded dispute resolution programs shall submit informational reports and statistics as
 8 required by the [commission] **Attorney General**.

9 **SECTION 15.** ORS 36.165 is amended to read:

10 36.165. (1) Any county that receives financial aid under ORS 36.155 may terminate its partic-
 11 ipation at the end of any month by delivering a resolution of its board of commissioners to the di-
 12 rector of the [Dispute Resolution Commission] **Attorney General** not less than 180 days before the
 13 termination date.

14 (2) If a county terminates its participation under ORS 36.160, the remaining portion of the fi-
 15 nancial aid made available to the county under ORS 36.160 shall revert to the Dispute Resolution
 16 Account to be used as specified in ORS 36.155.

17 **SECTION 16.** ORS 36.175 is amended to read:

18 36.175. (1) In accordance with the applicable provisions in ORS 183.310 to 183.550, the [Dispute
 19 Resolution Commission] **Attorney General** shall adopt by rule:

- 20 (a) Standards and guidelines for dispute resolution programs;
- 21 (b) Minimum reporting requirements for dispute resolution programs;
- 22 (c) Methods for evaluating dispute resolution programs;
- 23 (d) Minimum qualifications and training for persons conducting dispute resolution services in
 24 dispute resolution programs;
- 25 [(e) Minimum qualifications and training qualifications for personnel performing mediation services
 26 for the circuit courts under ORS 107.755 to 107.785;]
- 27 [(f)] (e) Participating funds requirements, if any, for entities receiving funds under ORS 36.155;
- 28 [(g)] (f) Requirements, if any, for the payment by participants for services provided by a program
 29 receiving funds under ORS 36.155; and
- 30 [(h)] (g) Any other provisions or procedures [necessary] for the administration of the [laws that
 31 the commission is charged with administering] **ORS 36.100 to 36.245 and 183.502**.

32 (2) This section does not apply to state agency dispute resolution programs.

33 **SECTION 17.** ORS 36.185 is amended to read:

34 36.185. After the appearance by all parties in any civil action, except proceedings under ORS
 35 107.700 to 107.732 or 124.005 to 124.040, a judge of any circuit court may refer a civil dispute to
 36 mediation under the terms and conditions set forth in ORS 36.180 to 36.210. When a party to a case
 37 files a written objection to mediation with the court, the action shall be removed from mediation
 38 and proceed in a normal fashion. All civil disputants shall be provided with written information de-
 39 scribing the mediation process, as provided by the [Dispute Resolution Commission] **Attorney Gen-
 40 eral**, along with information on established court mediation opportunities. Filing parties shall be
 41 provided with this information at the time of filing a civil action. Responding parties shall be pro-
 42 vided with this information by the filing party along with the initial service of filing documents upon
 43 the responding party.

44 **SECTION 18.** ORS 36.200 is amended to read:

45 36.200. (1) A circuit court providing mediation referral under ORS 36.180 to 36.210 shall estab-

lish mediation panels. [*The mediators on such panels shall have such qualifications as set by the Dispute Resolution Commission.*] Formal education in any particular field shall not be a prerequisite to serving as a mediator.

(2) Unless instructed otherwise by the court, upon referral by the court to mediation, the clerk of the court shall select at least three individuals from the court's panel of mediators and shall send their names to legal counsel for the parties, or to a party directly if not represented, with a request that each party state preferences within five judicial days. If timely objection is made to all of the individuals named, the court shall select some other individual from the mediator panel. Otherwise, the clerk, under the direction of the court, shall select as mediator one of the three individuals about whom no timely objection was made.

(3) Upon the court's or the parties' own selection of a mediator, the clerk shall:

(a) Notify the designated person of the assignment as mediator.

(b) Provide the mediator with the names and addresses of the parties and their representatives and with copies of the order of assignment.

(4) The parties to a dispute that is referred by the court to mediation may choose, at their option and expense, mediation services other than those suggested by the court, and entering into such private mediation services shall be subject to the same provisions of ORS 36.180 to 36.210.

(5) Disputing parties in mediation shall be free, at their own expense, to retain jointly or individually, experts, attorneys, fact finders, arbitrators and other persons to assist the mediation, and all such dispute resolution efforts shall be subject to the protection of ORS 36.180 to 36.210.

SECTION 19. ORS 36.210 is amended to read:

36.210. (1) Mediators, mediation programs and dispute resolution programs providing services under ORS 36.100 to 36.245 [*and mediators or other community programs providing dispute resolution services that the Dispute Resolution Commission determines comply with the standards established under ORS 36.175*] **and mediators, mediation programs and other community programs providing dispute resolution services that comply with the standards established under ORS 36.175, 107.755 or 107.775** are not civilly liable for any act or omission done or made while engaged in efforts to assist or facilitate a mediation or in providing other dispute resolution services, unless the act or omission was made or done in bad faith, with malicious intent or in a manner exhibiting a willful, wanton disregard of the rights, safety or property of another.

(2) Mediators, mediation programs and dispute resolution programs are not civilly liable for the disclosure of a confidential mediation communication unless the disclosure was made in bad faith, with malicious intent or in a manner exhibiting a willful, wanton disregard of the rights, safety or property of another.

(3) The limitations on liability provided by this section apply to the officers, directors, employees and agents of mediation programs and dispute resolution programs.

SECTION 20. ORS 36.224 is amended to read:

36.224. (1) Except as provided in this section, mediation communications in mediations in which a state agency is a party, or in which a state agency is mediating a dispute as to which the state agency has regulatory authority, are not confidential and may be disclosed or admitted as evidence in subsequent adjudicatory proceedings, as described in ORS 36.222 (7).

(2) The Attorney General[, *in consultation with the Dispute Resolution Commission,*] shall develop rules that provide for the confidentiality of mediation communications in mediations described in subsection (1) of this section. The rules shall also provide for limitations on admissibility and disclosure in subsequent adjudicatory proceedings, as described in ORS 36.222 (7). The rules shall

1 contain provisions governing mediations of workplace interpersonal disputes.

2 (3) Rules developed by the Attorney General under this section must include a provision for
3 notice to the parties to a mediation regarding the extent to which the mediation communications
4 are confidential or subject to disclosure or introduction as evidence in subsequent adjudicatory
5 proceedings.

6 (4) Subject to the approval of the Governor, a state agency may adopt any or all of the rules
7 developed by the Attorney General under this section.

8 *[(5) The commission shall maintain a list of state agencies that have adopted rules under this sec-*
9 *tion.]*

10 *[(6)]* (5) Except as provided in ORS 36.222, mediation communications in any mediation regarding
11 a claim for workers' compensation benefits conducted pursuant to rules adopted by the Workers'
12 Compensation Board are confidential, are not subject to disclosure under ORS 192.410 to 192.505 and
13 may not be disclosed or admitted as evidence in subsequent adjudicatory proceedings, as described
14 in ORS 36.222 (7), without regard to whether a state agency or other public body is a party to the
15 mediation or is the mediator in the mediation.

16 *[(7)]* (6) Mediation communications made confidential by a rule adopted by a state agency under
17 this section are not subject to disclosure under ORS 192.410 to 192.505.

18 **SECTION 21.** ORS 107.755 is amended to read:

19 107.755. (1) No later than January 1, 1999, each judicial district shall:

20 (a) Provide a mediation orientation session for all parties in cases in which child custody, par-
21 enting time or visitation is in dispute, and in any other domestic relations case in which mediation
22 has been ordered. The orientation session may be structured in any way the circuit court determines
23 best meets the needs of the parties. The orientation session should be designed to make the parties
24 aware of:

25 (A) What mediation is;

26 (B) Mediation options available to them; and

27 (C) The advantages and disadvantages of each method of dispute resolution.

28 (b) Except in matters tried under ORS 107.097 and 107.138 or upon a finding of good cause, re-
29 quire parties in all cases described in paragraph (a) of this subsection to attend a mediation orien-
30 tation session prior to any judicial determination of the issues.

31 (c) Provide mediation under ORS 107.755 to 107.785 in any case in which child custody, parent-
32 ing time and visitation are in dispute.

33 (d) Have developed a plan that addresses domestic violence issues and other power imbalance
34 issues in the context of mediation orientation sessions and mediation of any issue in accordance
35 with the following guidelines:

36 (A) All mediation programs and mediators must recognize that mediation is not an appropriate
37 process for all cases and that agreement is not necessarily the appropriate outcome of all mediation;

38 (B) Neither the existence of nor the provisions of a restraining order issued under ORS 107.718
39 may be mediated;

40 (C) All mediation programs and mediators must develop and implement:

41 (i) A screening and ongoing evaluation process of domestic violence issues for all mediation
42 cases;

43 (ii) A provision for opting out of mediation that allows a party to decline mediation after the
44 party has been informed of the advantages and disadvantages of mediation or at any time during the
45 mediation; and

1 (iii) A set of safety procedures intended to minimize the likelihood of intimidation or violence
2 in the orientation session, during mediation or on the way in or out of the building in which the
3 orientation or mediation occurs;

4 (D) When a mediator explains the process to the parties, the mediator shall include in the ex-
5 planation the disadvantages of mediation and the alternatives to mediation;

6 (E) All mediators shall obtain continuing education regarding domestic violence and related is-
7 sues; and

8 (F) Mediation programs shall collect appropriate data. Mediation programs shall be sensitive to
9 domestic violence issues when determining what data to collect.

10 (e) In developing the plan required by paragraph (d) of this subsection, consult with one or more
11 of the following:

12 (A) A statewide or local multidisciplinary domestic violence coordinating council.

13 (B) A nonprofit private organization funded under ORS 108.620.

14 (2) Notwithstanding any other provision of law, mediation under ORS 107.755 to 107.785, in-
15 cluding the mediation orientation session described in subsection (1)(a) of this section, may not be
16 encouraged or provided in proceedings under ORS 30.866, 107.700 to 107.732, 124.005 to 124.040 or
17 163.738.

18 (3) The court, as provided in ORS 3.220, may make rules consistent with ORS 107.755 to 107.785
19 to govern the operation and procedure of mediation provided under this section.

20 (4) If a court provides mediation of financial issues, it shall develop a list of mediators who meet
21 the minimum education and experience qualifications [*required by rule of the Dispute Resolution*
22 *Commission*] **established by rules adopted under ORS 1.002**. The rules must require demonstrated
23 proficiency in mediation of financial issues. Once the list is developed, the judicial district shall
24 maintain the list. Mediation of financial issues is subject to the plan developed under subsection
25 (1)(d) of this section and to the limitations imposed by subsection (2) of this section.

26 (5) A circuit court may provide mediation in connection with its exercise of conciliation juris-
27 diction under ORS 107.510 to 107.610, but a circuit court need not provide conciliation services in
28 order to provide mediation under ORS 107.755 to 107.785.

29 **SECTION 22.** ORS 107.775 is amended to read:

30 107.775. (1) A circuit court may obtain mediation services, with the prior approval of the gov-
31 erning body of each county involved, by:

32 (a) Using personnel performing conciliation services for the court under ORS 107.510 to 107.610;

33 (b) Contracting or entering into agreements with public or private agencies to provide mediation
34 services to the court; or

35 (c) Employing or contracting for mediators directly.

36 (2) Personnel performing mediation services for the circuit court shall have the minimum edu-
37 cational and experience qualifications [*required by rule of the Dispute Resolution Commission*] **es-**
38 **tablished by rules adopted under ORS 1.002**.

39 (3) Subject to the provisions of the Local Budget Law, the compensation and expenses of per-
40 sonnel performing mediation services for the circuit court and other expenses of mediation services
41 provided by the court shall be paid by the county or as may be agreed upon by the counties in-
42 volved. Personnel performing mediation services are not state employees, and their compensation
43 and expenses shall not be paid by the state.

44 (4) The parties to a child custody, parenting time or visitation dispute that is referred by the
45 circuit court to mediation may use, at their option and expense, mediation services other than those

1 provided by the court.

2 (5) Two or more counties may join together to provide services under ORS 107.510 to 107.610
3 and 107.755 to 107.785.

4 **SECTION 23.** ORS 135.959 is amended to read:

5 135.959. (1) A law enforcement agency, city attorney, district attorney, county juvenile depart-
6 ment or court may contract with qualified dispute resolution programs to provide mediation services
7 under ORS 135.951 or 135.953.

8 [(2) *The Dispute Resolution Commission in consultation with referring agencies, courts and medi-*
9 *ation service providers shall establish standards for data collection for disputes referred to*
10 *mediation.*]

11 [(3)] (2) As used in this section, “qualified dispute resolution program” means a program that
12 meets the standards for mediators and mediation programs established by the [*Dispute Resolution*
13 *Commission*] **Attorney General.**

14 **SECTION 24.** ORS 183.502 is amended to read:

15 183.502. (1) Unless otherwise prohibited by law, agencies may use alternative means of dispute
16 resolution in rulemaking proceedings, contested case proceedings, judicial proceedings in which the
17 agency is a party, and any other decision-making process in which conflicts may arise. The alter-
18 native means of dispute resolution may be arbitration, mediation or any other collaborative
19 problem-solving process designed to encourage parties to work together to develop mutually agree-
20 able solutions to disputes. Use of alternative means of dispute resolution by an agency does not af-
21 fect the application of ORS 192.410 to 192.505 to the agency, or the application of ORS 192.610 to
22 192.690 to the agency.

23 (2) An agency that elects to utilize alternative means of dispute resolution shall inform and may
24 consult with [*the Dispute Resolution Commission,*] the Department of Justice and the Oregon De-
25 partment of Administrative Services in developing a policy or program for implementation of alter-
26 native means of dispute resolution.

27 (3) The Attorney General, in consultation with [*the Dispute Resolution Commission and*] the
28 Oregon Department of Administrative Services, may develop for agencies model rules for the im-
29 plementation of alternative means of dispute resolution. An agency may adopt all or part of the
30 model rules by reference without complying with the rulemaking procedures of ORS 183.325 to
31 183.410. Notice of the adoption of all or part of the model rules must be filed by the agency with
32 the Secretary of State in the manner provided by ORS 183.355 for the filing of rules.

33 (4) When an agency reviews the standard agreements, forms for contracts and forms for applying
34 for grants or other assistance used by the agency, the agency shall determine whether the agree-
35 ments and forms should be amended to authorize and encourage the use of alternative means of
36 dispute resolution in disputes that arise under the agreement, contract or application.

37 (5) The Department of Justice, [*the Dispute Resolution Commission,*] the Oregon Department of
38 Administrative Services and the Governor shall collaborate to increase the use of alternative dis-
39 pute resolution to resolve disputes involving the State of Oregon by:

40 (a) Assisting agencies to develop a policy for alternative means of dispute resolution;

41 (b) Assisting agencies to develop or expand flexible and diverse agency programs that provide
42 alternative means of dispute resolution;

43 [(c) *Identifying, advising and assisting groups of agencies to cooperate in developing alternative*
44 *means of dispute resolution;*]

45 [(d) *Designating an agency within each group of agencies identified in paragraph (c) of this sub-*

1 *section to coordinate alternative means of dispute resolution among those agencies;]*

2 *[(e) Encouraging the coordination and integration of activities and programs among state and local*
3 *governments and the public to ensure efficiency of alternative means of dispute resolution;] and*

4 **(c) Providing assistance in the efficient and effective selection of mediators or**
5 **facilitators.**

6 *[(f) Developing a method to evaluate the effectiveness of agencies' alternative dispute resolution*
7 *programs].*

8 (6) *[The participating and coordinating]* Agencies **with alternative dispute resolution pro-**
9 **grams** shall seek to identify cases appropriate for mediation and other means of alternative dispute
10 resolution and to design systems and procedures to resolve those cases.

11 (7) The purpose of the agency alternative dispute resolution programs is to:

12 (a) Increase agency efficiency;

13 (b) Increase public and agency satisfaction with the process and results of dispute resolution;
14 and

15 (c) Decrease the cost of resolving disputes.

16 *[(8) The Department of Justice, the Dispute Resolution Commission and the Oregon Department*
17 *of Administrative Services shall jointly report to the Legislative Assembly on or before January 15 of*
18 *each odd-numbered year regarding any additional programs implemented under subsection (5) of this*
19 *section.]*

20 **SECTION 25.** ORS 197.830 is amended to read:

21 197.830. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to
22 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Ap-
23 peals.

24 (2) Except as provided in ORS 197.620 (1) and (2), a person may petition the board for review
25 of a land use decision or limited land use decision if the person:

26 (a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section;
27 and

28 (b) Appeared before the local government, special district or state agency orally or in writing.

29 (3) If a local government makes a land use decision without providing a hearing, except as
30 provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision
31 that is different from the proposal described in the notice of hearing to such a degree that the notice
32 of the proposed action did not reasonably describe the local government's final actions, a person
33 adversely affected by the decision may appeal the decision to the board under this section:

34 (a) Within 21 days of actual notice where notice is required; or

35 (b) Within 21 days of the date a person knew or should have known of the decision where no
36 notice is required.

37 (4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416
38 (11) or 227.175 (10):

39 (a) A person who was not provided mailed notice of the decision as required under ORS 215.416
40 (11)(c) or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of
41 receiving actual notice of the decision.

42 (b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who
43 is adversely affected or aggrieved by the decision may appeal the decision to the board under this
44 section within 21 days after the expiration of the period for filing a local appeal of the decision es-
45 tablished by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

1 (c) A person who receives mailed notice of a decision made without a hearing under ORS 215.416
2 (11) or 227.175 (10) may appeal the decision to the board under this section within 21 days of re-
3 ceiving actual notice of the nature of the decision, if the mailed notice of the decision did not rea-
4 sonably describe the nature of the decision.

5 (d) Except as provided in paragraph (c) of this subsection, a person who receives mailed notice
6 of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the
7 decision to the board under this section.

8 (5) If a local government makes a limited land use decision which is different from the proposal
9 described in the notice to such a degree that the notice of the proposed action did not reasonably
10 describe the local government's final actions, a person adversely affected by the decision may appeal
11 the decision to the board under this section:

12 (a) Within 21 days of actual notice where notice is required; or

13 (b) Within 21 days of the date a person knew or should have known of the decision where no
14 notice is required.

15 (6)(a) Except as provided in paragraph (b) of this subsection, the appeal periods described in
16 subsections (3), (4) and (5) of this section shall not exceed three years after the date of the decision.

17 (b) If notice of a hearing or an administrative decision made pursuant to ORS 197.195 or 197.763
18 is required but has not been provided, the provisions of paragraph (a) of this subsection do not ap-
19 ply.

20 (7)(a) Within 21 days after a notice of intent to appeal has been filed with the board under
21 subsection (1) of this section, any person may intervene in and be made a party to the review pro-
22 ceeding upon a showing of compliance with subsection (2) of this section.

23 (b) Notwithstanding the provisions of paragraph (a) of this subsection, persons who may inter-
24 vene in and be made a party to the review proceedings, as set forth in subsection (1) of this section,
25 are:

26 (A) The applicant who initiated the action before the local government, special district or state
27 agency; or

28 (B) Persons who appeared before the local government, special district or state agency, orally
29 or in writing.

30 (c) Failure to comply with the deadline set forth in paragraph (a) of this subsection shall result
31 in denial of a motion to intervene.

32 (8) If a state agency whose order, rule, ruling, policy or other action is at issue is not a party
33 to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on
34 the same date the respondent's brief is due.

35 (9) A notice of intent to appeal a land use decision or limited land use decision shall be filed
36 not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of
37 intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to
38 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is
39 mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a
40 certificate of mailing with the notice mailed under ORS 197.615 shall not render the notice defective.
41 Copies of the notice of intent to appeal shall be served upon the local government, special district
42 or state agency and the applicant of record, if any, in the local government, special district or state
43 agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule
44 of the board and shall be accompanied by a filing fee of \$175 and a deposit for costs to be estab-
45 lished by the board. If a petition for review is not filed with the board as required in subsections

1 (10) and (11) of this section, the filing fee and deposit shall be awarded to the local government,
2 special district or state agency as cost of preparation of the record.

3 (10)(a) Within 21 days after service of the notice of intent to appeal, the local government, spe-
4 cial district or state agency shall transmit to the board the original or a certified copy of the entire
5 record of the proceeding under review. By stipulation of all parties to the review proceeding the
6 record may be shortened. The board may require or permit subsequent corrections to the record;
7 however, the board shall issue an order on a motion objecting to the record within 60 days of re-
8 ceiving the motion.

9 (b) Within 10 days after service of a notice of intent to appeal, the board shall provide notice
10 to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860.
11 Any person moving to intervene shall be provided such notice within seven days after a motion to
12 intervene is filed. The notice required by this paragraph shall be accompanied by a statement that
13 mediation information or assistance may be obtained from the Department of Land Conservation and
14 Development[, *the coordinating agency for the Natural Resources Section of the Public Policy Dispute*
15 *Resolution Program*].

16 (11) A petition for review of the land use decision or limited land use decision and supporting
17 brief shall be filed with the board as required by the board under subsection (13) of this section.

18 (12) The petition shall include a copy of the decision sought to be reviewed and shall state:

19 (a) The facts that establish that the petitioner has standing.

20 (b) The date of the decision.

21 (c) The issues the petitioner seeks to have reviewed.

22 (13)(a) The board shall adopt rules establishing deadlines for filing petitions and briefs and for
23 oral argument.

24 (b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing
25 the record, the local government or state agency may withdraw its decision for purposes of recon-
26 sideration. If a local government or state agency withdraws an order for purposes of reconsider-
27 ation, it shall, within such time as the board may allow, affirm, modify or reverse its decision. If the
28 petitioner is dissatisfied with the local government or agency action after withdrawal for purposes
29 of reconsideration, the petitioner may refile the notice of intent and the review shall proceed upon
30 the revised order. An amended notice of intent shall not be required if the local government or state
31 agency, on reconsideration, affirms the order or modifies the order with only minor changes.

32 (14) The board shall issue a final order within 77 days after the date of transmittal of the record.
33 If the order is not issued within 77 days the applicant may apply in Marion County or the circuit
34 court of the county where the application was filed for a writ of mandamus to compel the board to
35 issue a final order.

36 (15)(a) Upon entry of its final order the board may, in its discretion, award costs to the pre-
37 vailing party including the cost of preparation of the record if the prevailing party is the local
38 government, special district or state agency whose decision is under review. The deposit required
39 by subsection (9) of this section shall be applied to any costs charged against the petitioner.

40 (b) The board shall also award reasonable attorney fees and expenses to the prevailing party
41 against any other party who the board finds presented a position without probable cause to believe
42 the position was well-founded in law or on factually supported information.

43 (16) Orders issued under this section may be enforced in appropriate judicial proceedings.

44 (17)(a) The board shall provide for the publication of its orders that are of general public in-
45 terest in the form it deems best adapted for public convenience. The publications shall constitute

1 the official reports of the board.

2 (b) Any moneys collected or received from sales by the board shall be paid into the Board
3 Publications Account established by ORS 197.832.

4 (18) Except for any sums collected for publication of board opinions, all fees collected by the
5 board under this section that are not awarded as costs shall be paid over to the State Treasurer to
6 be credited to the General Fund.

7 **SECTION 26.** ORS 339.333 is amended to read:

8 339.333. (1) The Center for School Safety shall be governed by a board of directors. The board
9 of directors shall consist of:

10 (a) The Superintendent of Public Instruction or a designee of the superintendent;

11 (b) The Director of the Oregon Youth Authority or a designee of the director;

12 (c) The Attorney General or a designee of the Attorney General;

13 (d) The Superintendent of State Police or a designee of the superintendent;

14 (e) The Director of Human Services or a designee of the director;

15 [(f) *The director of the Dispute Resolution Commission or a designee of the director;*]

16 [(g)] (f) Nine members appointed by the Governor, as follows:

17 (A) One member representing the Oregon School Boards Association;

18 (B) One member representing the Confederation of Oregon School Administrators;

19 (C) One member representing the Oregon Education Association;

20 (D) One member representing the Oregon School Employees Association;

21 (E) One member representing the Oregon State Sheriffs' Association;

22 (F) One member representing the Oregon Association Chiefs of Police;

23 (G) One member representing the Oregon District Attorneys Association;

24 (H) One member representing the National Resource Center for Safe Schools on the Northwest
25 Regional Educational Laboratory; and

26 (I) One member representing the Oregon School Safety Officers Association; and

27 [(h)] (g) Other members that the board may appoint.

28 (2) When making appointments to the board of directors, the Governor shall solicit recommen-
29 dations from professional organizations that represent school employees, school district boards,
30 school administrators and other education providers.

31 (3) The term of office of each board member appointed by the Governor is two years, but a
32 member serves at the pleasure of the Governor. Before the expiration of the term of a board mem-
33 ber, the Governor shall appoint a successor. A board member is eligible for reappointment but shall
34 not serve for more than two consecutive terms. If there is a vacancy for any cause, the Governor
35 shall make an appointment to become immediately effective for the unexpired term.

36 (4) A member of the board of directors is entitled to compensation and expenses as provided in
37 ORS 292.495.

38 (5) The board of directors shall meet a minimum of four times per year.

39 (6) The board of directors shall annually elect a chairperson and vice chairperson from the
40 membership. The board of directors may form committees as needed.

41 **SECTION 27.** ORS 390.240 is amended to read:

42 390.240. (1) The following disputes shall be submitted to mediation and if mediation is not suc-
43 cessful to arbitration as described in this section:

44 (a) A dispute with regard to the issuance of an archaeological permit under ORS 390.235; or

45 (b) A dispute over the disposition of human skeletal remains or burial goods under ORS 97.750.

1 (2) The State Parks and Recreation Commission in consultation with the [*Dispute Resolution*
2 *Commission*] **Attorney General** and the governing bodies of the Oregon Indian tribes shall adopt
3 rules to establish mediation and arbitration procedures. Such rules shall provide for appeal as de-
4 scribed in ORS 36.365.

5 [(3) *Until rules are adopted and procedures implemented under subsection (2) of this section, the*
6 *State Parks and Recreation Commission shall adopt interim rules that provide for resolution of dis-*
7 *putes. The arbitration panel under such a program shall consist of:*]

8 [(a) *The State Historic Preservation Officer or the officer's designee;*]

9 [(b) *A representative of the Commission on Indian Services;*]

10 [(c) *A representative of the Oregon State Museum of Anthropology;*]

11 [(d) *A representative of a governing body of a federally recognized Oregon Indian tribe; and*]

12 [(e) *A representative of the public, selected by the Dispute Resolution Commission.*]

13 **SECTION 28. ORS 36.115, 36.120, 36.125, 36.130, 36.180 and 36.245 are repealed.**

14 **SECTION 29. This 2003 Act being necessary for the immediate preservation of the public**
15 **peace, health and safety, an emergency is declared to exist, and this 2003 Act takes effect**
16 **on _____, 2003.**

17 _____