

A-Engrossed
Senate Bill 247

Ordered by the Senate February 22
Including Senate Amendments dated February 22

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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.

Eliminates sunset on laws requiring that University of Oregon School of Law and Mark O. Hatfield School of Government provide certain dispute resolution services.

Provides that 65 percent of amounts from dispute resolution surcharges in Dispute Resolution Account be distributed to Department of Higher Education on behalf of University of Oregon School of Law for purpose of carrying out responsibilities of school relating to dispute resolution. Provides that 35 percent of amounts from dispute resolution surcharges in Dispute Resolution Account be distributed to Department of Higher Education on behalf of Mark O. Hatfield School of Government for purpose of carrying out responsibilities of school relating to dispute resolution.

Provides that, for 2005-2007 biennium, specified amount deposited in Dispute Resolution Account be distributed to Judicial Department.

Requires Mark O. Hatfield School of Government, Oregon Department of Administrative Services and Department of Justice to coordinate school's provision of services to state agencies.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to dispute resolution; creating new provisions; amending ORS 21.480, 36.110, 36.145, 36.155,
3 135.959, 183.502, 352.043, 352.066 and 390.240; repealing sections 8b, 11b, 13b, 18b, 22b, 26b, 27b,
4 30b, 31b, 32b, 38 and 39, chapter 791, Oregon Laws 2003; appropriating money; and declaring an
5 emergency.

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

7 **SECTION 1. Sections 8b, 11b, 13b, 18b, 22b, 26b, 27b, 30b, 31b, 32b, 38 and 39, chapter 791,**
8 **Oregon Laws 2003, are repealed.**

9 **SECTION 2.** ORS 21.480, as amended by section 96, chapter 737, Oregon Laws 2003, and section
10 8a, chapter 791, Oregon Laws 2003, is amended to read:

11 21.480. (1) In all counties wherein legal representation is provided for the poor without fee by
12 a nonprofit legal aid program operating under the Legal Services Program established pursuant to
13 ORS 9.572, the clerk of the circuit court shall collect the fees provided for in subsection (2) of this
14 section to assist in defraying the operating costs of the legal aid program and to fund mediation
15 programs offered through the State Department of Agriculture. The fees provided for in subsection
16 (2) of this section are in addition to all other fees collected by the clerk of the court and shall be
17 collected by the clerk in the same manner that other fees are collected by the clerk.

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

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 spondent files an appearance in the suit, action or proceeding:

2 (a) \$9.50, for filings in the small claims department of a circuit court.

3 (b) \$18, upon the filing of a complaint that is subject to the filing fee established under ORS
4 105.130 (2). If the defendant demands a trial, the clerk shall collect a fee of \$38 from the defendant,
5 and an additional fee of \$21 from the plaintiff. In no event shall the plaintiff in an action subject to
6 the filing fee established under ORS 105.130 be required to pay a total fee of more than \$39 under
7 the provisions of this subsection.

8 (c) \$33, if the action, suit or proceeding is subject to the filing fees established by ORS 21.111.

9 (d) \$30, if the action, suit or proceeding is subject to the filing fees established by ORS 21.110
10 (2).

11 (e) \$38, for any other filings in a circuit court not specifically provided for in this subsection,
12 including all probate proceedings, protective proceedings under ORS chapter 125, adoption pro-
13 ceedings and change of name proceedings.

14 (3) In addition to the fees provided for in ORS 21.010, the State Court Administrator shall collect
15 a fee of \$55 from an appellant or petitioner whenever a filing fee is collected under ORS 21.010 and
16 a fee of \$15 from each respondent whenever an appearance fee is collected under ORS 21.010.

17 (4) All fees collected by the clerk under this section shall be deposited with the State Court
18 Administrator. All fees collected under this section shall be distributed in the manner provided by
19 ORS 9.574.

20 (5) Ten percent of the funds deposited with the State Court Administrator under this section
21 shall be transferred by the State Court Administrator on a monthly basis to the State Department
22 of Agriculture, until such time as the amount specified under subsection (6) of this section has been
23 transferred to the State Department of Agriculture for the biennium. Moneys transferred to the
24 State Department of Agriculture under this section are continuously appropriated to the department
25 and may be used by the department only for the purpose of funding mediation programs established
26 by the department. Moneys appropriated to the department under this subsection may not be used
27 by the department to fund the costs of conducting individual farm credit mediations. **The depart-**
28 **ment shall consult with the director of the Mark O. Hatfield School of Government in es-**
29 **tablishing and operating mediation programs funded under this subsection.**

30 (6) The amount transferred by the State Court Administrator to the State Department of Agri-
31 culture under subsection (5) of this section may not exceed \$150,000 in any biennium.

32 **SECTION 3.** ORS 36.110, as amended by section 11a, chapter 791, Oregon Laws 2003, is
33 amended to read:

34 36.110. As used in ORS 36.100 to 36.238:

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

37 (2) "Dean" means the Dean of the University of Oregon School of Law.

38 [(2) "Dispute resolution services" includes but is not limited to mediation, conciliation and arbi-
39 tration.]

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

42 (4) "Dispute resolution services" **includes but is not limited to mediation, conciliation and**
43 **arbitration.**

44 [(4)] (5) "Mediation" means a process in which a mediator assists and facilitates two or more
45 parties to a controversy in reaching a mutually acceptable resolution of the controversy and in-

1 cludes all contacts between a mediator and any party or agent of a party, until such time as a re-
2 solution is agreed to by the parties or the mediation process is terminated.

3 [(5)] (6) "Mediation agreement" means an agreement arising out of a mediation, including any
4 term or condition of the agreement.

5 [(6)] (7) "Mediation communications" means:

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

9 (b) All memoranda, work products, documents and other materials, including any draft mediation
10 agreement, that are prepared for or submitted in the course of or in connection with a mediation
11 or by a mediator, a mediation program or a party to, or any other person present at, mediation
12 proceedings.

13 [(7)] (8) "Mediation program" means a program through which mediation is made available and
14 includes the director, agents and employees of the program.

15 [(8)] (9) "Mediator" means a third party who performs mediation. "Mediator" includes agents
16 and employees of the mediator or mediation program and any judge conducting a case settlement
17 conference.

18 [(9)] (10) "Public body" [*means any state agency, county or city governing body, school district,*
19 *special district, municipal corporation, any board, department, commission, council, or agency thereof,*
20 *and any other public agency of this state*] **has the meaning given that term in ORS 174.109.**

21 [(10)] (11) "State agency" means any state officer, board, commission, bureau, department, or
22 division thereof, in the executive branch of state government.

23 **SECTION 4.** ORS 36.145, as amended by section 13a, chapter 791, Oregon Laws 2003, is
24 amended to read:

25 36.145. (1) The Dispute Resolution Account is established in the State Treasury, separate and
26 distinct from the General Fund. All moneys received under ORS **36.150 and 36.170** shall be depos-
27 ited to the credit of the account.

28 (2) **Moneys in the account attributable to deposits made under ORS 36.170 are contin-**
29 **uously appropriated to the Department of Administrative Services to be distributed as fol-**
30 **lows:**

31 (a) **Sixty-five percent of the moneys in the account shall be distributed to the Depart-**
32 **ment of Higher Education on behalf of the University of Oregon School of Law, for the pur-**
33 **pose of carrying out the responsibilities of the school under ORS 36.100 to 36.238.**

34 (b) **Thirty-five percent of the moneys in the account shall be distributed to the Depart-**
35 **ment of Higher Education on behalf of the Mark O. Hatfield School of Government, for the**
36 **purpose of carrying out the responsibilities of the school under ORS 21.480, 183.502 and**
37 **390.240.**

38 **SECTION 4a.** Notwithstanding ORS 36.145 (2), moneys in the Dispute Resolution Account
39 attributable to deposits made under ORS 36.170 during the 2005-2007 biennium are contin-
40 uously appropriated to the Oregon Department of Administrative Services to be distributed
41 as follows:

42 (1) **The first \$800,000 deposited in the account shall be distributed to the Judicial De-**
43 **partment for the purpose of providing mediation and arbitration services in the courts of the**
44 **state.**

45 (2) **Sixty-five percent of the moneys remaining in the account after the distribution re-**

1 **quired by subsection (1) of this section shall be distributed to the Department of Higher Ed-**
2 **ucation on behalf of the University of Oregon School of Law, for the purpose of carrying out**
3 **the responsibilities of the school under ORS 36.100 to 36.238.**

4 **(3) Thirty-five percent of the moneys remaining in the account after the distribution re-**
5 **quired by subsection (1) of this section shall be distributed to the Department of Higher Ed-**
6 **ucation on behalf of the Mark O. Hatfield School of Government, for the purpose of carrying**
7 **out the responsibilities of the school under ORS 21.480, 183.502 and 390.240.**

8 **SECTION 5.** ORS 135.959, as amended by section 26a, chapter 791, Oregon Laws 2003, is
9 amended to read:

10 135.959. A law enforcement agency, city attorney, district attorney, county juvenile department
11 or court may contract with dispute resolution programs to provide mediation services under ORS
12 135.951 or 135.953. **The programs must meet the standards for dispute resolution programs**
13 **established by the Dean of the University of Oregon School of Law under ORS 36.175.**

14 **SECTION 6.** ORS 183.502, as amended by section 27a, chapter 791, Oregon Laws 2003, is
15 amended to read:

16 183.502. (1) Unless otherwise prohibited by law, agencies may use alternative means of dispute
17 resolution in rulemaking proceedings, contested case proceedings, judicial proceedings in which the
18 agency is a party, and any other decision-making process in which conflicts may arise. The alter-
19 native means of dispute resolution may be arbitration, mediation or any other collaborative
20 problem-solving process designed to encourage parties to work together to develop mutually agree-
21 able solutions to disputes. Use of alternative means of dispute resolution by an agency does not af-
22 fect the application of ORS 192.410 to 192.505 to the agency, or the application of ORS 192.610 to
23 192.690 to the agency.

24 (2) An agency that elects to utilize alternative means of dispute resolution shall inform and may
25 consult with **the Mark O. Hatfield School of Government**, the Department of Justice and the
26 Oregon Department of Administrative Services in developing a policy or program for implementation
27 of alternative means of dispute resolution.

28 (3) The Attorney General, in consultation with the **Mark O. Hatfield School of Government**
29 **and the** Oregon Department of Administrative Services, may develop for agencies model rules for
30 the implementation of alternative means of dispute resolution. An agency may adopt all or part of
31 the model rules by reference without complying with the rulemaking procedures of ORS 183.325 to
32 183.410. Notice of the adoption of all or part of the model rules must be filed by the agency with
33 the Secretary of State in the manner provided by ORS 183.355 for the filing of rules.

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

38 (5) The Department of Justice, **the Mark O. Hatfield School of Government**, the Oregon De-
39 partment of Administrative Services and the Governor shall collaborate to increase the use of al-
40 ternative dispute resolution to resolve disputes involving the State of Oregon by:

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

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

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

45 **(6)(a) The Mark O. Hatfield School of Government, the Oregon Department of Adminis-**

1 **trative Services and the Department of Justice shall work cooperatively in designing the**
2 **program under section 11 of this 2005 Act that is intended to provide services to, apply to**
3 **or involve any state agency.**

4 **(b) The Mark O. Hatfield School of Government, the Oregon Department of Administra-**
5 **tive Services and the Department of Justice shall enter into an interagency agreement that**
6 **includes, but is not limited to, provisions on appropriate roles, reporting requirements and**
7 **coordination of services provided to state agencies by the Mark O. Hatfield School of Gov-**
8 **ernment pursuant to section 11 of this 2005 Act.**

9 **(c) Before providing dispute resolution services in a specific matter to a state agency**
10 **under section 11 of this 2005 Act, the Mark O. Hatfield School of Government shall notify the**
11 **Department of Justice of any proposal to provide such services.**

12 [(6)] (7) Agencies with alternative dispute resolution programs shall seek to identify cases ap-
13 propriate for mediation and other means of alternative dispute resolution and to design systems and
14 procedures to resolve those cases.

15 [(7)] (8) The purpose of the agency alternative dispute resolution programs is to:

16 (a) Increase agency efficiency;

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

19 (c) Decrease the cost of resolving disputes.

20 **SECTION 7.** ORS 352.043, as amended by section 31a, chapter 791, Oregon Laws 2003, is
21 amended to read:

22 352.043. (1) There is created within the Department of Higher Education the University of
23 Oregon School of Law. The school shall be administered by the University of Oregon.

24 (2) *[The purpose of the school is]* **The University of Oregon School of Law shall:**

25 (a) *[To]* Prepare students for careers in the legal profession.

26 (b) **Perform the duties required of the school under ORS 36.100 to 36.238.**

27 (3) The president of the University of Oregon shall appoint the Dean of the University of Oregon
28 School of Law.

29 **SECTION 8.** ORS 352.066, as amended by section 30a, chapter 791, Oregon Laws 2003, is
30 amended to read:

31 352.066. (1) Pursuant to ORS 351.870, there is created within the Department of Higher Educa-
32 tion the Mark O. Hatfield School of Government. The Mark O. Hatfield School of Government shall
33 be administered by Portland State University. The president of Portland State University shall ap-
34 point the director of the Mark O. Hatfield School of Government.

35 (2) *[The purpose of]* The Mark O. Hatfield School of Government *[is]* **shall:**

36 (a) *[To]* Prepare students for careers in political service, public administration and the admin-
37 istration of justice.

38 (b) **Perform the duties required of the school under section 11 of this 2005 Act and ORS**
39 **21.480, 183.502 and 390.240.**

40 **SECTION 9.** ORS 390.240, as amended by section 32a, chapter 791, Oregon Laws 2003, is
41 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 Mark O. Hatfield**
2 **School of Government** and the governing bodies of the Oregon Indian tribes shall adopt rules to
3 establish mediation and arbitration procedures.

4 **SECTION 10. Section 11 of this 2005 Act is added to and made a part of ORS 36.100 to**
5 **36.238.**

6 **SECTION 11. The Mark O. Hatfield School of Government shall establish and operate a**
7 **program to provide mediation and other alternative dispute resolution services to public**
8 **bodies, as defined by ORS 174.109, and to persons who have disputes with public bodies, as**
9 **defined by ORS 174.109.**

10 **SECTION 12. ORS 36.155 is amended to read:**

11 36.155. Funds allocated to the Department of Higher Education on behalf of the University of
12 Oregon School of Law under ORS 36.145 (1)[(a)] for distribution under this section shall be awarded
13 by the Dean of the University of Oregon School of Law for the purpose of providing dispute resolu-
14 tion services in the county from which the funds originated. On or before July 1 of each odd-
15 numbered year, the dean shall advise each county of the county's share of the amount allocated for
16 the purposes of this section. The determination shall be based upon each county's respective share
17 of moneys contributed under ORS 36.170. Before distributing these funds in a county, the county
18 must apply for authority or the dean must proceed under ORS 36.160. If a dispute resolution program
19 is not selected for funding under ORS 36.160 within three fiscal years after the fiscal year in which
20 the filing fee surcharge was collected, then the funds from that fiscal year may be distributed by the
21 dean in other counties.

22 **SECTION 13. This 2005 Act being necessary for the immediate preservation of the public**
23 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
24 **on its passage.**