

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 363
HOUSE BILL 657

AN ACT TO AUTHORIZE A MEDIATION PROGRAM FOR THE OFFICE OF
ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 150B of the General Statutes is amended by adding the following section to read:

"§ 150B-23.1. Mediated settlement conferences.

(a) Purpose. – This section authorizes a mediation program in the Office of Administrative Hearings in which the chief administrative law judge may require the parties in a contested case to attend a prehearing settlement conference conducted by a mediator. The purpose of the program is to determine whether a system of mediated settlement conferences may make the operation of the Office of Administrative Hearings more efficient, less costly, and more satisfying to the parties.

(b) Definitions. – The following definitions apply in this section:

(1) Mediated settlement conference. – A conference ordered by the chief administrative law judge involving the parties to a contested case and conducted by a mediator prior to a contested case hearing.

(2) Mediator. – A neutral person who acts to encourage and facilitate a resolution of a contested case but who does not make a decision on the merits of the contested case.

(c) Conference. – The chief administrative law judge may order a mediated settlement conference for all or any part of a contested case to which an administrative law judge is assigned to preside. All aspects of the mediated settlement conference shall be conducted in so far as possible in accordance with the rules adopted by the Supreme Court for the court-ordered mediation pilot program under G.S. 7A-38.

(d) Attendance. – The parties to a contested case in which a mediated settlement conference is ordered, their attorneys, and other persons having authority to settle the parties' claims shall attend the settlement conference unless excused by the presiding administrative law judge.

(e) Mediator. – The parties shall have the right to stipulate to a mediator. Upon the failure of the parties to agree within a time limit established by the presiding administrative law judge, a mediator shall be appointed by the presiding administrative law judge.

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

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

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

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

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

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

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

Sec. 3. This act becomes effective October 1, 1993 only if the General Assembly appropriates funds to implement the purpose of this act, and expires June 30, 1995. It applies to contested cases pending on or commenced after the effective date.

In the General Assembly read three times and ratified this the 16th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives