

The bill provides that if parties to mediation reach a settlement agreement in a pending proceeding and the agreement is evidenced by a record signed by the mediation parties, the agreement is enforceable in the same manner as any other written contract. The act further provides that the agreement shall not affect any outstanding court order unless the terms of the agreement are incorporated into a subsequent order. The bill also provides that a court, administrative agency or arbitrator has the discretion to incorporate the terms of the agreement in the order or other document disposing of the matter.

Significant Issues

The proposed legislation creates confidentiality regarding statements and information presented in the mediation setting; and shields mediators from being called to testify regarding mediation proceedings.

Providing for confidentiality will encourage the use of mediation. Mediation is a proven effective means for resolving conflicts before they lead to grievances, appeals, discrimination complaints and litigation, and as a means of settling cases once they have reached the formal stage.

GSD states the provisions for alternative dispute resolution contained in this bill will reinforce and enhance GSD's efforts to develop a network of trained mediators in state government and to promote the use of mediation to resolve personnel issues and other disputes involving state agencies.

The AGO supports this bill enacting into law a broad umbrella of confidentiality for mediation proceedings and participants yet provides both fixed and flexible exceptions which appear appropriate. It is consistent with the existing view of persons engaging in mediation of disputes that confidentiality is a requisite in order to achieve a full and frank exchange of views, at least between the mediator and the parties, in order to improve the chances of achieving a mediated resolution of the dispute. It should be stated that attempts have been made to disclose mediation proceedings in the AGO's Consumer Division mediation and this will assist in the protection of that process.

FISCAL IMPLICATIONS

GSD notes measures fostering the use of mediation will reduce administrative expenses, defense costs, and payout of judgments for claims which are insured by the Risk Management Division of GSD if they involve formal proceedings.

The AOC believes there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes.

ADMINISTRATIVE IMPLICATIONS

GSD anticipates a reduction of administrative costs is anticipated by reducing formal claims and by earlier settlement of claims.

DUPLICATION

HB 770 duplicates SB 656 & SB 683

TECHNICAL ISSUES

The AGO believes section 5.A.(1) is unclear and should be deleted. If it refers to a final agreement, to the extent it is incorporated in a court order or judgment pursuant to section 6.B. it becomes a public document. Otherwise, we see no need for disclosure of a final agreement or any intermediate agreement, particularly it is not clear how may “parts” of the agreement can be designated as confidential.

DW/lg