

**Enrolled**  
**Senate Bill 247**

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Joint Interim Committee on Judiciary)

CHAPTER .....

AN ACT

Relating to dispute resolution; creating new provisions; amending ORS 21.480, 36.110, 36.135, 36.145, 36.150, 36.155, 36.160, 36.165, 36.170, 36.175, 135.959, 183.502, 352.043, 352.066 and 390.240; repealing sections 8b, 11b, 13b, 18b, 22b, 26b, 27b, 30b, 31b, 32b, 38 and 39, chapter 791, Oregon Laws 2003; appropriating money; and declaring an emergency.

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

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 Sections 8b, 11b, 13b, 18b, 22b, 26b, 27b, 30b, 31b, 32b, 38 and 39, chapter 791, Oregon Laws 2003, are repealed.**

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

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

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

- (a) \$9.50, for filings in the small claims department of a circuit court.
- (b) \$18, upon the filing of a complaint that is subject to the filing fee established under ORS 105.130 (2). If the defendant demands a trial, the clerk shall collect a fee of \$38 from the defendant, and an additional fee of \$21 from the plaintiff. In no event shall the plaintiff in an action subject to the filing fee established under ORS 105.130 be required to pay a total fee of more than \$39 under the provisions of this subsection.
- (c) \$33, if the action, suit or proceeding is subject to the filing fees established by ORS 21.111.
- (d) \$30, if the action, suit or proceeding is subject to the filing fees established by ORS 21.110 (2).
- (e) \$38, for any other filings in a circuit court not specifically provided for in this subsection, including all probate proceedings, protective proceedings under ORS chapter 125, adoption proceedings and change of name proceedings.

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

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

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

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

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

36.110. As used in ORS 36.100 to 36.238:

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

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

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

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

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

[(4)] (5) "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.

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

[(6)] (7) "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 agreement, that are prepared for or submitted in the course of or in connection with a mediation or by a mediator, a mediation program or a party to, or any other person present at, mediation proceedings.

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

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

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

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

**SECTION 4.** ORS 36.135 is amended to read:

36.135. The Dean of the University of Oregon School of Law shall periodically review dispute resolution programs in this state. If the dean determines that there are reasonable grounds to believe that a program is not in substantial compliance with the standards and guidelines adopted under ORS 36.175, the dean may suspend or terminate the funding of the program **under ORS 36.155** and recover any unexpended funds or improperly expended funds from the program.

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

36.145. The Dispute Resolution Account is established in the State Treasury, separate and distinct from the General Fund. All moneys received under ORS [36.170] **36.150** shall be deposited to the credit of the account. **Notwithstanding the provisions of ORS 291.238, all moneys in the account are continuously appropriated to the Department of Higher Education for the purposes for which the moneys were made available and shall be expended in accordance with the terms and conditions upon which the moneys were made available.**

**SECTION 4b.** ORS 36.150 is amended to read:

36.150. The Department of Higher Education, on behalf of the Mark O. Hatfield School of Government and the University of Oregon School of Law, may accept and expend moneys from any public or private source, including the federal government, made available for the purpose of encouraging, promoting or establishing dispute resolution programs in Oregon or to facilitate and assist the schools in carrying out the responsibilities of the schools under ORS 36.100 to 36.238 and 183.502. All moneys received by the Department of Higher Education under this section shall be deposited in the Dispute Resolution Account. *[Notwithstanding the provisions of ORS 291.238, all such moneys are continuously appropriated to the Department of Higher Education for the purposes for which they were made available and shall be expended in accordance with the terms and conditions upon which they were made available.]*

**SECTION 4c.** ORS 36.155 is amended to read:

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

**SECTION 4d.** ORS 36.160 is amended to read:

36.160. (1) To *[participate in the expenditure of funds for dispute resolution programs within the county]* **qualify for a grant** under ORS 36.155, a county shall notify the Dean of the University of Oregon School of Law in accordance with the schedule established by rule by the dean. Such notification shall be by resolution of the appropriate board of county commissioners or, if the programs are to serve more than one county, by joint resolution. A county providing notice may select the dispute resolution programs to receive *[funds]* **grants** under ORS 36.155 for providing dispute resolution services within the county from among qualified dispute resolution programs.

(2) The county's notification to the dean must include a statement of agreement by the county to engage in a selection process and to select as the recipient of funding an entity capable of and willing to provide dispute resolution services according to the rules of the dean. [*Actual funding by the dean*] **The award of a grant** is contingent upon the selection by the county of a qualified entity. The dean may provide consultation and technical assistance to a county to identify, develop and implement dispute resolution programs that meet the standards and guidelines adopted by the dean under ORS 36.175.

(3) If a county does not issue a notification according to the schedule established by the dean, the dean may notify a county board of commissioners that the dean intends to [*fund*] **make a grant** to a dispute resolution program in the county [*with funds earmarked for the county under ORS 36.155*]. The dean may, after such notification, assume the county's role under subsection (1) of this section unless the county gives the notice required by subsection (1) of this section. If the dean assumes the county's role, the dean may contract with a qualified program for a two-year period. The county may, 90 days before the expiration of an agreement between a qualified program and the dean, notify the dean under subsection (1) of this section that the county intends to assume its role under subsection (1) of this section.

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

(5) All funded dispute resolution programs shall submit informational reports and statistics as required by the dean.

**SECTION 4e.** ORS 36.165 is amended to read:

36.165. (1) Any county that receives [*financial aid*] **a grant** under ORS 36.155 may terminate its participation at the end of any month by delivering a resolution of its board of commissioners to the Dean of the University of Oregon School of Law not less than 180 days before the termination date.

(2) If a county terminates its participation under ORS 36.160, the remaining portion of the [*financial aid*] **grant** made [*available*] to the county under ORS 36.160 shall revert to the [*Dispute Resolution Account*] **University of Oregon School of Law** to be used as specified in ORS 36.155.

**SECTION 4f.** ORS 36.170, as amended by section 18a, chapter 791, Oregon Laws 2003, is amended to read:

36.170. (1) The clerks of the circuit courts shall collect a dispute resolution surcharge at the time a civil action, suit or proceeding is filed, including appeals. The surcharge shall be collected from a plaintiff or petitioner at the time the proceeding is filed. The surcharge shall be collected from a defendant or respondent upon making appearance. The amount of the surcharge shall be:

(a) \$9, if the action, suit or proceeding is subject to the filing fees established by ORS 21.110 (1), 21.310 or any other filing fee not specifically provided for in this section.

(b) \$7, if the action, suit or proceeding is subject to the filing fees established by ORS 21.110 (2) or 105.130, or if the action is filed in the small claims department of circuit court and the amount or value claimed exceeds \$1,500.

(c) \$5, if the action, suit or proceeding is subject to the filing fees established by ORS 21.111.

(d) \$3 if the action is filed in the small claims department of circuit court and the amount or value claimed does not exceed \$1,500.

(2) All surcharges collected under this section shall be deposited by the State Court Administrator into the State Treasury to the credit of the [*Dispute Resolution Account*] **General Fund**.

**SECTION 4g.** ORS 36.175 is amended to read:

36.175. (1) The Dean of the University of Oregon School of Law shall adopt by rule:

(a) Standards and guidelines for dispute resolution programs receiving [*funds*] **grants** under ORS 36.155;

(b) Minimum reporting requirements for dispute resolution programs receiving [*funds*] **grants** under ORS 36.155;

(c) Methods for evaluating dispute resolution programs receiving [*funds*] **grants** under ORS 36.155;

(d) Minimum qualifications and training for persons conducting dispute resolution services in dispute resolution programs receiving [*funds*] **grants** under ORS 36.155;

(e) Participating funds requirements, if any, for entities receiving [*funds*] **grants** under ORS 36.155;

(f) Requirements, if any, for the payment by participants for services provided by a program receiving [*funds*] **grants** under ORS 36.155; and

(g) Any other provisions or procedures for the administration of ORS 36.100 to 36.175.

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

**SECTION 4h. All amounts in the Dispute Resolution Account on the effective date of this 2005 Act are transferred to the General Fund.**

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

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

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

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

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

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

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

(5) The Department of Justice, **the Mark O. Hatfield School of Government**, the Oregon Department of Administrative Services and the Governor shall collaborate to increase the use of alternative dispute resolution to resolve disputes involving the State of Oregon by:

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

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

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

**(6)(a) The Mark O. Hatfield School of Government, the Oregon Department of Administrative Services and the Department of Justice shall work cooperatively in designing the program under section 11 of this 2005 Act that is intended to provide services to, apply to or involve any state agency.**

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

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

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

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

(a) Increase agency efficiency;

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

(c) Decrease the cost of resolving disputes.

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

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

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

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

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

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

**SECTION 8.** ORS 352.066, as amended by section 30a, chapter 791, Oregon Laws 2003, and section 2, chapter 453, Oregon Laws 2005 (Enrolled Senate Bill 240), is amended to read:

352.066. (1) Pursuant to ORS 351.870, there is created within the Department of Higher Education the Mark O. Hatfield School of Government. The Mark O. Hatfield School of Government shall be administered by Portland State University. The president of Portland State University shall appoint the director of the Mark O. Hatfield School of Government.

(2) The purposes of the Mark O. Hatfield School of Government are:

(a) To prepare students for careers in political service, public administration and the administration of justice; *[and]*

**(b) To perform the duties required of the school under section 11 of this 2005 Act and ORS 21.480, 183.502 and 390.240; and**

*[(b)]* (c) To assist the Criminal Justice Research and Policy Institute in carrying out the duties under subsection (3) of this section.

(3) There is created within the Mark O. Hatfield School of Government the Criminal Justice Research and Policy Institute. The institute may assist the Legislative Assembly and state and local governments in developing policies to reduce crime and delinquency by:

(a) Providing the Legislative Assembly with objective, nonpartisan analyses of existing or proposed state criminal justice policies, which analyses may not be inconsistent with state or federal law or the Oregon or United States Constitution;

(b) Evaluating programs, including but not limited to programs dealing with public safety professionalism, ethics in leadership and childhood development, funded directly or indirectly by the State of Oregon that are intended to reduce criminal and delinquent behavior or to improve professionalism in public safety careers;

(c) Managing reviews and evaluations relating to major long-term issues confronting the state involving criminal and juvenile justice, public safety professionalism, ethics in leadership and early childhood development programs;

(d) Initiating, sponsoring, conducting and publishing research on criminal and juvenile justice, public safety professionalism, ethics in leadership and early childhood development that is peer reviewed and directly useful to policymakers;

(e) Organizing conferences on current state issues that bring together policymakers, public agencies and leading academicians; and

(f) Seeking to strengthen the links among the Legislative Assembly, state and local governments, the Oregon Criminal Justice Commission, the Department of Public Safety Standards and Training and the academic community in the interest of more informed policymaking, the application of best practices and more relevant academic research.

(4) The Governor, the Chief Justice of the Supreme Court, the President of the Senate, the Speaker of the House of Representatives or the chairperson of a legislative committee with responsibility over criminal or juvenile justice systems or childhood development programs may request the assistance of the Criminal Justice Research and Policy Institute in evaluating criminal or juvenile justice programs developed for, but not necessarily limited to, preventing delinquency, reducing crime and improving professionalism in public safety careers.

(5) Agencies, departments and officers of state and local governments may assist the Criminal Justice Research and Policy Institute in the performance of its functions and furnish information, data and advice as requested by the institute.

**SECTION 9.** ORS 390.240, as amended by section 32a, chapter 791, Oregon Laws 2003, is amended to read:

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

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

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

(2) The State Parks and Recreation Commission in consultation with **the Mark O. Hatfield School of Government** and the governing bodies of the Oregon Indian tribes shall adopt rules to establish mediation and arbitration procedures.

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

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

**SECTION 12. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.**

**Passed by Senate July 7, 2005**

**Repassed by Senate August 1, 2005**

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Secretary of Senate

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President of Senate

**Passed by House August 1, 2005**

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Speaker of House

**Received by Governor:**

.....M,....., 2005

**Approved:**

.....M,....., 2005

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2005

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Secretary of State