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FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/07
 SPONSOR Chasey LAST UPDATED 2/22/07 HB 192/aHJC
 SHORT TITLE Mediation Procedures Act SB _____
 ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Conflicts SB 592

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)
 Administrative Office of the Courts (AOC)
 District Attorneys (DA)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 192 specifically amends Section 5 of the bill by adding a new paragraph that provides that mediation communication related to whether parties to mediation reached a binding and enforceable settlement is not confidential. The remainder of the amendment involves minor numbering corrections to reflect the addition of this new provision and the striking of a former provision addressing the same issue but in a different way.

Synopsis of Original Bill

House Bill 192 enacts the Mediation Procedures Act (MPA), which establishes confidentiality for mediation communications and provides for various exceptions to that confidentiality. It also provides for enforcement of a settlement agreement reached through mediation.

Section 3 defines the scope of the MPA and provides that it applies to a mediation in which the mediation is required by statute, court or administrative agency rule or when referred to mediation by a court, administrative agency or arbitrator. It also applies when the parties to the mediation agree to mediate as evidenced by a record that is signed by the parties. It does not apply to collective bargaining relationships and agreements, to a mediation conducted by a judge who might make a ruling on a case, when the parties agree in a prior writing that the MPA will not apply to the mediation or it is declared by rule of court or government prior to the mediation that the MPA does not apply.

Section 4 provides that all communications in mediation are confidential and not subject to disclosure or used as evidence except as provided in the MPA or by court rule.

Section 5 sets out the exceptions to confidentiality, which include when the parties agree in writing either during or prior to a mediation that communications are not confidential, if the communications threaten or lead to violence in the mediation, if they reveal intent to commit a felony or inflict bodily harm, if they disprove a felony, if they are required by law to be public, if they are sought or offered to disprove a claim of professional misconduct or malpractice or if they relate to the administrative facts of the mediation. Mediation communications may also be disclosed if a court orders disclosure after a hearing in camera and for good cause shown if the evidence is not otherwise available in an action arising out of a mediation agreement. Mediators shall not be required to make disclosure of mediation communications except as provided above with the exception of the agreement of the parties to disclose or to prove or disprove a claim of mediator misconduct or malpractice. Nothing in the MPA prevents a government agency from ordering prior to mediation that different or additional rules of confidentiality shall apply.

Section 6 provides that written settlement agreements reached in mediation are enforceable like any other written contract and that a court, administrative agency or arbitrator has the discretion to incorporate the terms of the agreement in an order or other document disposing of the matter.

SIGNIFICANT ISSUES

The bill could apply to mediation provided in special education dispute resolution proceedings conducted pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and 6.31.2.13 NMAC of the state special education rules, since Section 3(A) of the bill applies the MPA to mediators and mediation in which the parties agree to mediate as evidenced by a record signed by the mediation parties. Under IDEA and the state rules, mediation is voluntary and is requested in writing. See 34 CFR § 300.506 and 6.31.2.13(H)(3)(b) and 6.31.2.13(I)(8)(b) NMAC. However, the bill as currently drafted will not affect the mediation program provided by the Special Education Bureau of the Public Education Department because Section 5(D)(3) of the bill allows a government when conducting a mediation program under its auspices to provide for different or additional rules of confidentiality that apply to a mediation. As presently drafted, Section 6 of the bill is consistent with the enforcement of the settlement agreement provisions in 34 CFR § 300.506(b)(7) and 6.31.2.13(H)(3)(c) NMAC, which provide that a settlement agreement is enforceable in court.

ADMINISTRATIVE IMPLICATIONS

The bill would protect the confidentiality of mediation communications, and would also protect mediators from having to testify or otherwise disclose those communications unless the parties

agreed to do so. This would prove helpful to state agencies because it would help promote the use of mediation to resolve disputes between agencies and their employees (or members of the public).

CONFLICT

SB592

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Since the special education mediation program is governed by both federal and state regulations, there will be no consequences to the program if the bill is not enacted. Mediations will still occur. Parties will move forward creating their own agreements to their mediation procedure.

CS/yr:csd