

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 1132

PRINTER NO. 1644

AMOUNT

See Fiscal Impact

FUND

General Fund

DATE INTRODUCED

April 13, 2018

PRIME SPONSOR

Senator Greenleaf

DESCRIPTION

Senate Bill 1132 amends Title 44 (Law and Justice) of the Pennsylvania Consolidated Statutes, to establish the Pennsylvania Alternative Dispute Resolution Commission and the Alternative Dispute Resolution Fund.

Title 44 is amended by adding Chapter 75, establishing the Pennsylvania Alternative Dispute Resolution Commission (commission).

"Alternative dispute resolution" is defined as a process that assists persons in a dispute to resolve or manage their differences without resorting to criminal prosecution, civil unrest, economic disruption or violence; or is intended to prevent or mitigate a dispute. The term does not include litigation.

"Alternative dispute resolution program" is defined as a program or service that provides or encourages alternative dispute resolution, regardless of the nature of the entity that provides the program or service.

The purposes of the commission are to encourage and facilitate the development, use, coordination, support and evaluation of affordable and high-quality alternative dispute resolution programs and services and to recommend improvements in alternative dispute resolution programs and services.

A board of directors shall manage the commission and its staff. The board of directors shall consist of the following members:

1. The Chief Justice of the Supreme Court;
2. Seven (7) members appointed by the Chief Justice of the Supreme Court. These members shall serve a three-year term;
3. Five (5) members appointed by the Governor. These members shall serve a two-year term; and
4. Four (4) members who are sitting members of the General Assembly. These members shall serve a three-year term.

A member of the commission may be reappointed for one term. Appointing authorities shall select members to the commission in such a manner as to ensure diversity of race, ethnic origin, age, gender, occupation and geographic residence.

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The board of directors shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

The commission shall employ an executive director and an associate director and may employ other professional, technical and clerical staff.

The commission has the following powers and duties:

1. Assist in the development, use, coordination, support and evaluation of alternative dispute resolution programs in governmental, educational, business, community settings and in judicial settings in concert with the Unified Judicial System;
2. Support the advancement of alternative dispute resolution methods;
3. Advise representatives of judicial and education systems, business and governmental entities and communities regarding alternative dispute resolution procedures and practices;
4. Collect and disseminate information and make referrals for alternative dispute resolution programs and related education, training and research;
5. Collect and disseminate data helpful to the purposes of the commission;
6. Identify and encourage the use of best practices in alternative dispute resolution;
7. Educate the public regarding alternative dispute resolution programs and methods;
8. Facilitate access to alternative dispute resolution programs and services;
9. Facilitate the establishment of programs that provide education or training in alternative dispute resolution;
10. Develop an annual operating budget;
11. Hire and determine the salary of commission staff;
12. Establish and maintain a central office and other offices as necessary;
13. Seek, solicit and apply for grants from public or private sources to provide for the operation of alternative dispute resolution programs;
14. Accept the services of volunteers;
15. Enter into contracts for goods or services, or authorize the executive director to enter into contracts as necessary;
16. Prepare reports; and
17. Promulgate regulations and issue rules as necessary.

The commission shall submit an annual report to the Governor, the General Assembly and the Pennsylvania Supreme Court regarding the operations of the commission during the preceding fiscal year and conduct a review every two (2) years of the effectiveness of alternative dispute resolution programs and services in the Commonwealth.

The Alternative Dispute Resolution Fund (fund) is established in the State Treasury. The General Assembly may appropriate or transfer funds to the fund as necessary to implement this new chapter.

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This act shall take effect in 60 days.

FISCAL IMPACT:

A June 2017 Joint State Government Commission report entitled "Alternative Dispute Resolution in Pennsylvania: Report of the Advisory Committee on Alternative Dispute Resolution," states that public and government entities can realize substantial savings by utilizing Alternative Dispute Resolution over litigation. The most prevalent form of Alternative Dispute Resolution is mediation. The costs of litigating tort cases range from \$43,000 (automobile tort) to \$122,000 (malpractice).¹ For many disputes, mediation and other voluntary and relatively informal Alternative Dispute Resolution procedures may permit the parties to address their needs better than litigation.²

According to the U.S. Department of Justice, Office of Legal Policy, Office of Dispute Resolution (ODR), in fiscal year 2016, the ODR approved approximately \$2.7 million of funding in 630 active cases to optimize case settlements. Attorneys avoided litigation expenses of more than \$70 million, in addition to saving 26,388 days (72 years) of full work days of attorneys and staff, 2,733 months (227 years) of litigation and 2,460 trial days (7 years).

While some research documents a high probability of cost savings with expanded use of Alternative Dispute Resolution, comprehensive data on the cost of dispute resolution is difficult to obtain, partly because parties, attorneys, and ADR neutrals may be bound by confidentiality requirements, or may refuse to share information with researchers.

The legislation has an enactment date of 60 days. Therefore there would be no fiscal impact on Commonwealth funds in FY 2017-18.

Assuming full year funding in FY 2018-19, salary and benefit costs for an Executive Director, Associate Director, Attorney and an Administrative Assistant are estimated at \$729,000. Annual operating costs are estimated at \$120,000.

According to the Department of General Services, annual facility costs of an office of four (4) employees in Harrisburg is estimated at \$15,000. Therefore, annual costs to the Commonwealth with enactment of this legislation are estimated to be \$864,000.

Based on the Joint State Government report and the experience of the U.S. Department of Justice, the expenses incurred by the Commonwealth to fund the Alternative Dispute Resolution Commission should be more than offset by reduced trial and appellate caseloads.³

¹ Paula Hannaford-Agor and Nicole L. Waters, "Estimating the Cost of Civil Litigation," in National Center for State Courts, *Caseload Highlights* vol. 20 (January 2013).

² See Commonwealth of Pennsylvania, Office of General Counsel "Mediation Handbook," 2

³ The Pennsylvania Superior Court mediation program resolved 50-70% of the cases it handled. Ann Begler, e-mail to Joint State Government Commission staff, November 16, 2016. A volunteer foreclosure mediation program in Bucks County settled 2400 cases from 2009 to 2015. Barbara Lyons, e-mail to Commission staff, November 9, 2016.