



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This PCB does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

Mediation is a type of alternative dispute resolution used to resolve legal conflict between parties. Family law is one area where mediation has been widely used by the courts to assist parties in reaching agreement prior to trial. In mediation, parties involved in a dispute meet to work out their differences with the help of a mediator. The mediator assists and guides the parties toward their own solution by helping them to define the important issues and understand each other's interests. The mediator focuses each side on the crucial factors necessary for settlement and on the consequences of not settling. The mediator does not decide the outcome of the case and cannot compel the parties to settle.

In 2005, the Florida Legislature passed SB 348, which in part created s. 25.375, F.S. Section 25.375, F.S., authorizes the Supreme Court to adopt a unified family court model. The unified family court model utilizes a unified system of judicial case coordination in the state to identify cases relating to individuals and families. Individuals and families are assigned to a single circuit court judge that handles all of their cases dealing with family law matters. This model alleviates the problem of having different judges presiding over one family's various family law cases. The purpose is to reduce confusion and avoid conflicting court orders.

The act creating the unified family court system did not make corresponding changes to related statutes pertaining to mediation.

##### **Effect of the Bill**

This bill redefines mediation in chapter 44, F.S., to provide for mediation in the unified family court. This bill reflects the changes created by the passage in 2005 of s. 25.375, F.S., which created the unified family court system.

This bill amends s. 44.1011, F.S., to create a definition for "unified family court mediation". "Unified family court mediation" means mediation of any of the following circuit court matters:

- Dissolution of marriage.
- Division and distribution of property arising out of a dissolution of marriage.
- Annulment.
- Support unconnected with dissolution of marriage.
- Paternity.
- Child support.
- The Uniform Reciprocal Enforcement of Support Act and the Uniform Interstate Family Support Act.
- Custodial care of and access to children.
- Adoption.
- Name changes.
- Declaratory judgment actions related to premarital, marital, or postmarital agreements.
- Civil domestic, repeat, sexual, or dating violence injunctions.
- Juvenile dependency.

- Termination of parental rights.
- Juvenile delinquency.
- Emancipation of a minor.
- Children in need of services.
- Families in need of services.
- Truancy.
- Modification and enforcement of orders entered in these cases.

This bill also amends s. 44.1011, F.S., to remove the definitions for "family mediation" and "dependency or in need of service mediation".

This bill creates s. 44.1015, F.S. The new section contains substantive law regarding the scope and content of mediation currently in s. 44.1011, F.S. (definitions applicable to ch. 44, F.S.).

This bill amends s. 44.102, F.S., to provide that a court must refer to mediation matters that involve disputed custody, visitation, or other parental responsibility issues. However, a court must not refer to mediation, regardless of any other law, any case dealing with domestic violence, dating violence, or sexual violence injunctions, except pursuant to rules adopted by the Supreme Court of Florida. This PCB also provides that a court must not refer to mediation any case where the court finds that there has been a history of violence which would compromise the mediation process or endanger any person's safety.

This bill provides that the Supreme Court is responsible for maintaining a list of certified mediators instead of the chief judge of each judicial circuit. This change reflects current practice.

This bill amends s. 44.108, F.S., related to fees for mediation services. The PCB changes responsibility for payment from each "person" in a case to each "party".

Section 61.183(1), F.S., provides that a court may refer to mediation any proceeding in which the issues of parental responsibility, primary residence, visitation, or support of a child are contested. However, s. 44.102, F.S., provides that a court must refer to mediation disputed custody, visitation, or other parental responsibility issues. This PCB amends s. 61.183, F.S., to conform to s. 44.102, F.S., requiring that a court refer to mediation cases where the issue of parental responsibility, primary residence, visitation, or support of a child is contested.

The bill would limit the current practice of waiving mediation fees in dependency cases to only those parties found to be indigent.

#### C. SECTION DIRECTORY:

Section 1 amends s. 44.1011, F.S., to revise definitions applicable to mediation.

Section 2 creates s. 44.1015, F.S., to provide for conduct of mediation.

Section 3 amends s. 44.102, F.S., to provide when a court must refer cases to mediation and when the courts must not refer cases to mediation.

Section 4 amends s. 44.108, F.S., to provide fee provisions related to mediation.

Section 5 amends s. 61.183, F.S., to require mediation in certain family law cases and provide conformity with section 44.102(c), F.S.

Section 6 provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The Dispute Resolution Center provided the following fiscal comment:

"Under current law, the only mediation cases for which fees can be charged are county court cases above small claims and "family" cases as currently defined in 44.1011(c). Dependency cases (and other cases which would be under the umbrella of the unified family court) currently are exempt from mediation fees."

Under the bill, fees would be waived in these cases only for those parties found to be indigent.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 15, 2006, the Judiciary Committee adopted one amendment and reported the bill as a CS. The CS differs from the original bill in that the CS changes the current practice of waiving mediation fees in dependency cases for all parties by limiting the waiver to only those parties found to be indigent.