

SENATE BILL No. 330

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-22.

Synopsis: Mediation for state agencies and vendors. Requires the use of early mediation concerning a dispute between a state agency and a contractor.

Effective: July 1, 2020.

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January 13, 2020, read first time and referred to Committee on Tax and Fiscal Policy.



Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

SENATE BILL No. 330

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-22-18.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]:

4 **Chapter 18.5. Early Mediation**
5 **Sec. 1. As used in this chapter, "early mediation" means a**
6 **mediation that is conducted before any other proceeding or review**
7 **is initiated concerning a dispute between a vendor and a state**
8 **agency.**

9 **Sec. 2. As used in this chapter, "party" means a state agency or**
10 **the state agency's vendor.**

11 **Sec. 3. As used in this chapter, "vendor" means a person who**
12 **contracts with a state agency to provide goods or services to the**
13 **state agency.**

14 **Sec. 4. (a) A state agency or a vendor that is aggrieved or**
15 **adversely affected by an action or inaction of the other party shall**
16 **seek to enter early mediation to attempt to resolve the dispute**
17 **before any other proceeding or review may be initiated.**



1 (b) A state agency or vendor that receives a request to enter
2 early mediation shall participate in early mediation.

3 (c) A party described in subsection (a) that seeks to enter early
4 mediation must request the use of early mediation with respect to
5 an action or inaction by filing a request with the party responsible
6 for the action or inaction within one hundred eighty (180) days
7 after the person is given notice or becomes aware of the action or
8 inaction.

9 Sec. 5. A party may participate in early mediation under this
10 section with or without representation.

11 Sec. 6. Before beginning an early mediation, and not later than
12 thirty (30) days after a request for early mediation is filed under
13 section 4(c) of this chapter, the parties shall sign a written
14 agreement to participate in early mediation. The agreement must
15 provide for the following:

16 (1) Confidentiality in accordance with Rule 2.11 of the
17 Indiana Supreme Court Rules for Alternate Dispute
18 Resolution.

19 (2) Judicial immunity of the mediator in a manner consistent
20 with Rule 1.5 of the Indiana Supreme Court Rules for
21 Alternate Dispute Resolution.

22 (3) A requirement that all provisions of any early mediation
23 settlement that results from the early mediation must be
24 written and signed by each party and any attorney who
25 participates in the early mediation.

26 The written agreement under this section must be substantially
27 similar to the written agreement listed as Form A to the Indiana
28 Supreme Court Rules for Alternate Dispute Resolution.

29 Sec. 7. (a) Not later than thirty (30) days after the filing of a
30 request to enter early mediation under section 4 of this chapter, the
31 parties may choose and agree on a mediator and agree on the
32 method of compensation for the mediator. If the parties are not
33 able to agree on a mediator:

34 (1) the parties shall request the Indiana supreme court
35 administrator to provide the parties with a list of three (3)
36 registered civil mediators;

37 (2) the parties shall designate one (1) party to strike the name
38 of one (1) mediator from the list;

39 (3) the other party shall strike the name of one (1) of the
40 remaining mediators from the list; and

41 (4) the final remaining mediator on the list shall serve as the
42 mediator for the parties in the early mediation.



1 (b) Unless otherwise agreed, early mediation fees must be
2 shared equally among the parties.

3 (c) A mediator under this section is subject to the standards of
4 conduct provided in the Indiana Supreme Court Rules for
5 Alternate Dispute Resolution. A mediator may not be chosen for an
6 early mediation under this section if the mediator:

7 (1) has an interest in the outcome of the early mediation;

8 (2) is related to any of the parties or attorneys in the early
9 mediation; or

10 (3) is employed by any of the parties or attorneys involved in
11 the early mediation.

12 (d) Early mediation sessions must begin not later than fifteen
13 (15) days after the mediator is chosen.

14 Sec. 8. Before beginning the early mediation, each party shall
15 provide the mediator with a written confidential summary of the
16 dispute as described in Rule 2.7 of the Indiana Supreme Court
17 Rules for Alternate Dispute Resolution.

18 Sec. 9. Parties shall participate in the early mediation in good
19 faith. However, parties are not required to reach an agreement.

20 Sec. 10. If a settlement agreement is reached through early
21 mediation, in order to be enforceable all agreed upon provisions
22 must be in writing and signed by each party. Each party shall
23 receive a copy of the written settlement agreement.

24 Sec. 11. (a) If a settlement agreement is not reached through
25 early mediation, the early mediation may be concluded. A
26 statement concerning the agreement of the parties to conclude the
27 early mediation must:

28 (1) be in writing;

29 (2) include the date of the conclusion of the early mediation;

30 (3) be signed by the mediator and each party; and

31 (4) include a copy of the mediator's findings and a
32 determination described in subsection (b).

33 Each party shall receive a copy of the conclusion document. The
34 mediator shall also provide a copy of a conclusion document in an
35 electronic format under IC 5-14-6 to the legislative council.

36 (b) If the early mediation is terminated without the parties
37 reaching a settlement agreement, the mediator shall prepare
38 written findings and a determination for proposed resolution. The
39 mediator's written determination and proposed recommendation
40 may be introduced in any subsequent proceeding concerning the
41 action or inaction that is the basis for the dispute.

42 Sec. 12. A request for early mediation, or the failure to reach a



1 **settlement agreement through early mediation, does not prohibit**
2 **a party from subsequently initiating any other proceeding or**
3 **review concerning the action or inaction that is the basis for the**
4 **dispute.**

5 SECTION 2. IC 5-22-19-2 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 2. (a) **Subject to**
7 **IC 5-22-18.5-4**, a person aggrieved by a determination under this
8 article may file a petition for judicial review of that determination in a
9 court of appropriate jurisdiction.

10 (b) The court shall grant relief only if it determines that a person
11 seeking judicial relief has been substantially prejudiced by a
12 determination that is any of the following:

- 13 (1) Arbitrary, capricious, an abuse of discretion, or otherwise not
14 in accordance with law.
- 15 (2) Contrary to constitutional right, power, privilege, or immunity.
- 16 (3) In excess of statutory jurisdiction, authority, or limitations, or
17 short of statutory right.
- 18 (4) Without observance of procedure required by law.
- 19 (5) Unsupported by substantial evidence.

