



**DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION**

MEMORANDUM

DATE: January 29, 2015

TO: Honorable Floyd Prozanski, Chair
Senate Committee on Judiciary

FROM: Aaron Knott, Legislative Director

SUBJECT: SB 189 – Changes process to adopt mediation confidentiality rules

This testimony is presented in support of SB 189.

BACKGROUND

In 1997 the Legislature enacted Senate Bill 160 providing significant confidentiality protections for mediation. This legislation also allowed state agencies to participate in confidential mediations but only after adopting rules developed by the Attorney General. This rulemaking step was meant to ensure that the broad confidentiality provided to agencies in mediation was balanced with the public interest in transparency in government.

Unfortunately, the process of adopting the rules as developed by the Attorney General is unnecessarily restrictive. Even though agencies are simply adopting model rules, they are required to go through the entirety of the rulemaking process. This is inefficient for agencies and frustrating for the public.

SB 189 WILL SIMPLIFY THIS PROCESS

This concept would amend ORS 36.224 to make the adoption of mediation confidentiality rules the same as other model rules developed by the Attorney General. The Attorney General will go through the usual process of adopting these model rules, including providing a notice and comment period for the public. Agencies could then choose to adopt the model rules by reference. This would:

- Allow stakeholders to participate at the point in the process where their participation matters, when DOJ is drafting the “model” rules;
- Relieve agencies of an administrative burden that has no purpose; and,
- Make it easier for agencies to adopt the most current version of the rules.

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