

House Bill 2123

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that court may not declare rule invalid in facial challenge to rule because rule could be applied in manner that violates constitutional provision, statute or statewide planning goal.

A BILL FOR AN ACT

1
2 Relating to judicial review of rules; amending ORS 183.400.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 183.400 is amended to read:

5 183.400. (1) The validity of any rule may be determined upon a petition by any person to the
6 Court of Appeals in the manner provided for review of orders in contested cases. The court shall
7 have jurisdiction to review the validity of the rule whether or not the petitioner has first requested
8 the agency to pass upon the validity of the rule in question, but not when the petitioner is a party
9 to an order or a contested case in which the validity of the rule may be determined by a court.

10 (2) The validity of any applicable rule may also be determined by a court, upon review of an
11 order in any manner provided by law or pursuant to ORS 183.480 or upon enforcement of such rule
12 or order in the manner provided by law.

13 (3) Judicial review of a rule shall be limited to an examination of:

14 (a) The rule under review;

15 (b) The statutory provisions authorizing the rule; and

16 (c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking
17 procedures.

18 (4) The court shall declare the rule invalid only if it finds that the rule:

19 (a) Violates constitutional provisions;

20 (b) Exceeds the statutory authority of the agency; or

21 (c) Was adopted without compliance with applicable rulemaking procedures.

22 (5) In the case of disputed allegations of irregularities in procedure which, if proved, would
23 warrant reversal or remand, the Court of Appeals may refer the allegations to a master appointed
24 by the court to take evidence and make findings of fact. The court's review of the master's findings
25 of fact shall be de novo on the evidence.

26 (6) The court *[shall]* **may** not declare a rule invalid solely because *[it]* **the rule** was adopted
27 without compliance with applicable rulemaking procedures after a period of two years after the date
28 the rule was filed in the office of the Secretary of State, if the agency attempted to comply with
29 those procedures and *[its]* **the agency's** failure to do so did not substantially prejudice the interests
30 of the parties.

31 **(7) The court may not declare a rule invalid in a proceeding under subsection (1) of this**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 **section solely because the rule could be applied in a manner that violates a constitutional**
2 **provision, a statute or a statewide planning goal.**

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