

Enrolled House Bill 2423

Sponsored by Representative RICHARDSON (at the request of Oregon Law Center) (Presession filed.)

CHAPTER

AN ACT

Relating to contested case proceedings; creating new provisions; and amending ORS 35.520, 58.355, 161.346, 181.661, 183.310, 183.315, 183.413, 183.415, 183.480, 279B.425, 279C.450, 351.088, 352.360, 701.145, 776.129 and 813.410.

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

SECTION 1. ORS 183.413 is amended to read:

183.413. (1) The Legislative Assembly finds that [*the citizens of this state*] **parties to a contested case hearing** have a right to be informed as to the procedures by which contested cases are heard by state agencies, their rights in hearings before state agencies, the import and effect of hearings before state agencies and their rights and remedies with respect to actions taken by state agencies. Accordingly, it is the purpose of subsections (2) [to (4)] **and** (3) of this section to set forth certain requirements of state agencies so that [*citizens*] **parties to contested case hearings** shall be fully informed as to these matters when exercising their rights before state agencies.

(2) Prior to the commencement of a contested case hearing before any agency including those agencies identified in ORS 183.315, the agency shall [*inform*] **serve personally or by mail a written notice to each party to the hearing [of the following matters]** that includes the following:

- (a) **The time and place of the hearing.**
- (b) **A statement of the authority and jurisdiction under which the hearing is to be held.**
- (c) **A statement that generally identifies the issues to be considered at the hearing.**
- (d) **A statement indicating that the party may be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources.**
- (e) **A statement that the party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues.**
- (f) **A statement indicating whether discovery is permitted and, if so, how discovery may be requested.**

[*(a)*] (**g**) [*If a party is not represented by an attorney,*] A general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence.

[*(b)*] (**h**) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties.

[*(c)*] (**i**) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the agency.

[(d)] (j) Whether an attorney will represent the agency in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.

[(e)] (k) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the agency, whether the person presiding at the hearing is or is not an employee, officer or other representative of the agency and whether that person has the authority to make a final independent determination.

[(f)] (L) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

[(g)] (m) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the agency and the hearing reopened.

[(h)] (n) Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

[(i)] (o) A description of the appeal process from the determination or order of the agency.

[(3) The information required to be given to a party to a hearing under subsection (2) of this section may be given in writing or orally before commencement of the hearing.]

[(4)] (3) The failure of an agency to give notice of any item specified in subsection (2) of this section[, shall] **does** not invalidate any determination or order of the agency unless upon an appeal from or review of the determination or order a court finds that the failure affects the substantial rights of the complaining party. In the event of such a finding, the court shall remand the matter to the agency for a reopening of the hearing and shall direct the agency as to what steps it shall take to remedy the prejudice to the rights of the complaining party.

SECTION 2. ORS 183.415 is amended to read:

183.415. (1) The Legislative Assembly finds that persons affected by actions taken by state agencies have a right to be informed of their rights and remedies with respect to the actions.

[(1)] (2) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice, served personally or by registered or certified mail.

[(2)] (3) [The notice shall] Notice under this section must include:

(a) A statement of the party's right to hearing, [or a statement of the time and place of the hearing] with a description of the procedure and time to request a hearing, or a statement of the time and place of the hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved; [and]

(d) A short and plain statement of the matters asserted or charged[.]; and

(e) A statement indicating whether and under what circumstances an order by default may be entered.

[(3) Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.]

[(4) Agencies may adopt rules of procedure governing participation in contested cases by persons appearing as limited parties.]

[(5)(a) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. Informal settlement may be made in license revocation proceedings by written agreement of the parties and the agency consenting to a suspension, fine or other form of intermediate sanction.]

[(b) Any informal disposition of a contested case, other than an informal disposition by default, must be in writing and signed by the party or parties to the contested case. The agency shall incorporate that disposition into a final order. An order under this paragraph is not subject to ORS 183.470. The agency shall deliver or mail a copy of the order to each party, or, if applicable, to the party's at-

torney of record. An order that incorporates the informal disposition is a final order in a contested case, but is not subject to judicial review. A party may petition the agency to set aside a final order that incorporates the informal disposition on the ground that the informal disposition was obtained by fraud or duress.]

[(6) An order adverse to a party may be issued upon default only upon prima facie case made on the record of the agency. When an order is effective only if a request for hearing is not made by the party, the record may be made at the time of issuance of the order, and if the order is based only on material included in the application or other submissions of the party, the agency may so certify and so notify the party, and such material shall constitute the evidentiary record of the proceeding if hearing is not requested.]

[(7) At the commencement of the hearing, the officer presiding shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.]

[(8) Testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.]

[(9) The officer presiding at the hearing shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the officer during the pendency of the proceeding and notify the parties of the communication and of their right to rebut such communications. If an ex parte communication is made to an administrative law judge assigned from the Office of Administrative Hearings established by ORS 183.605, the administrative law judge must comply with ORS 183.685.]

[(10) The officer presiding at the hearing shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case.]

[(11) The record in a contested case shall include:]

[(a) All pleadings, motions and intermediate rulings.]

[(b) Evidence received or considered.]

[(c) Stipulations.]

[(d) A statement of matters officially noticed.]

[(e) Questions and offers of proof, objections and rulings thereon.]

[(f) A statement of any ex parte communications on a fact in issue made to the officer presiding at the hearing.]

[(g) Proposed findings and exceptions.]

[(h) Any proposed, intermediate or final order prepared by the agency or an administrative law judge.]

[(12) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The record need not be transcribed unless requested for purposes of rehearing or court review. The agency may charge the party requesting transcription the cost of a copy of transcription, unless the party files an appropriate affidavit of indigency. However, upon petition, a court having jurisdiction to review under ORS 183.480 may reduce or eliminate the charge upon finding that it is equitable to do so, or that matters of general interest would be determined by review of the order of the agency.]

SECTION 3. **Section 4 of this 2007 Act is added to and made a part of ORS 183.415 to 183.430.**

SECTION 4. **(1) In a contested case proceeding, the parties may elect to be represented by counsel and to respond and present evidence and argument on all issues properly before the presiding officer in the proceeding.**

(2) Agencies may adopt rules of procedure governing participation in contested case proceedings by persons appearing as limited parties.

(3)(a) Unless prohibited by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. Informal settlement may be made in license revocation proceedings by written agreement of the parties and the agency consenting to a suspension, fine or other form of intermediate sanction.

(b) Any informal disposition of a contested case, other than an informal disposition by default, must be in writing and signed by the party or parties to the contested case. The agency shall incorporate that disposition into a final order. An order under this paragraph is not subject to ORS 183.470. The agency shall deliver or mail a copy of the order to each party and to the attorney of record if the party is represented. An order that incorporates the informal disposition is a final order in a contested case, but is not subject to judicial review. A party may petition the agency to set aside a final order that incorporates the informal disposition on the ground that the informal disposition was obtained by fraud or duress.

(4) An order adverse to a party may be issued upon default only if a *prima facie* case is made on the record. The record on a default order includes all materials submitted by the party. The record on a default order may be made at the time of issuance of the order. If the record on the default order consists solely of an application and other materials submitted by the party, the agency shall so note in the order.

(5) At the commencement of a contested case hearing, the officer presiding at the hearing shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(6) Testimony at a contested case hearing shall be taken upon oath or affirmation of the witness. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(7) The officer presiding at the hearing shall place on the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to the officer during the pendency of the proceeding and notify the parties of the communication and of their right to rebut the communication. If an ex parte communication is made to an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605, the administrative law judge must comply with ORS 183.685.

(8) The officer presiding at the hearing shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case and the correct application of the law to those facts.

(9) The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) Evidence received or considered.

(c) Stipulations.

(d) A statement of matters officially noticed.

(e) Questions and offers of proof, objections and rulings thereon.

(f) A statement of any ex parte communication that must be disclosed under subsection (7) of this section and that was made to the officer presiding at the hearing.

(g) Proposed findings and exceptions.

(h) Any proposed, intermediate or final order prepared by the agency or an administrative law judge.

(10) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony in a contested case proceeding. The record need not be transcribed unless requested for purposes of rehearing or court review. The agency may charge the party requesting transcription the cost of a copy of transcription, unless the party files an appropriate affidavit of indigency. Upon petition, a court having jurisdiction to review under ORS 183.480 may reduce or eliminate the charge upon finding that it is equitable to do so, or that matters of general interest would be determined by review of the order of the agency.

SECTION 5. ORS 35.520 is amended to read:

35.520. Any person who applies for relocation benefits or assistance under ORS 35.510 shall receive the public entity's written decision on the application, which shall include the statement of [the] **any** amount awarded, [*if any,*] the statutory basis for the award[,] and the statement of any

finding of fact that the public entity made in arriving at its decision. A person aggrieved by [said written] **the** decision shall be entitled to a hearing substantially of the character required by ORS [183.415, 183.425, 183.450, 183.460 and] **183.413 to 183.470**, unless federal, state or local law provides otherwise. Notice required by ORS 183.415 must be served within 180 days of the receipt of the written decision by the aggrieved party. The decision of the public entity shall be reviewable pursuant to ORS 183.480.

SECTION 6. ORS 58.355 is amended to read:

58.355. (1) The regulatory board may suspend, revoke or refuse to issue or renew any certificate of registration for any of the following reasons:

(a) The revocation or suspension of the license of any officer, director, shareholder or employee not promptly suspended or discharged by the corporation;

(b) The death of the last remaining shareholder; or

(c) Upon finding that the holder of or applicant for a certificate has failed to comply with the provisions of this chapter or the regulations prescribed by the regulatory board pursuant to this chapter.

(2) Before any certificate of registration is denied, suspended or revoked by the regulatory board, notice and hearing shall be provided in accordance with ORS [183.415] **183.413 to 183.470**.

(3) Except as provided in ORS 58.365, any corporation may appeal from the final order of the regulatory board as provided in ORS 183.480.

SECTION 7. ORS 161.346 is amended to read:

161.346. (1) The Psychiatric Security Review Board shall conduct hearings upon any application for discharge, conditional release, commitment or modification filed pursuant to ORS 161.336, 161.341 or 161.351 and as otherwise required by ORS 161.336 to 161.351 and shall make findings on the issues before it which may include:

(a) If the board finds that the person is no longer affected by mental disease or defect, or, if so affected, no longer presents a substantial danger to others, the board shall order the person discharged from commitment or from conditional release.

(b) If the board finds that the person is still affected by a mental disease or defect and is a substantial danger to others, but can be controlled adequately if conditionally released with treatment as a condition of release, the board shall order the person conditionally released as provided in ORS 161.336.

(c) If the board finds that the person has not recovered from the mental disease or defect and is a substantial danger to others and cannot adequately be controlled if conditionally released on supervision, the board shall order the person committed to, or retained in, a state hospital designated by the Department of Human Services if the person is at least 18 years of age, or a secure intensive community inpatient facility designated by the Department of Human Services if the person is under 18 years of age, for care, custody and treatment.

(2) At any time, the board may appoint a psychiatrist or licensed psychologist to examine the person and to submit a report to the board. Reports filed with the board pursuant to the examination shall include, but need not be limited to, an opinion as to the mental condition of the person and whether the person presents a substantial danger to others, and whether the person could be adequately controlled with treatment as a condition of release. To facilitate the examination of the person, the board may order the person placed in the temporary custody of any state hospital or other suitable facility.

(3) The board may make the determination regarding discharge or conditional release based upon the written reports submitted pursuant to this section. If any member of the board desires further information from the examining psychiatrist or licensed psychologist who submitted the report, these persons shall be summoned by the board to give testimony. The board shall consider all evidence available to it which is material, relevant and reliable regarding the issues before the board. Such evidence may include but is not limited to the record of trial, the information supplied by the attorney representing the state or by any other interested party, including the person, and information concerning the person's mental condition and the entire psychiatric and criminal history

of the person. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible at hearings. Testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(4) The board shall furnish to the person about whom the hearing is being conducted, the attorney representing the person, the Attorney General, the district attorney and the court or department of the county from which the person was committed written notice of any hearing pending under this section within a reasonable time prior to the hearing. The notice shall include:

(a) The time, place and location of the hearing.

(b) The nature of the hearing and the specific action for which a hearing has been requested, the issues to be considered at the hearing and a reference to the particular sections of the statutes and rules involved.

(c) A statement of the authority and jurisdiction under which the hearing is to be held.

(d) A statement of all rights under subsection (6) of this section.

(5) Prior to the commencement of a hearing, the board or presiding officer shall [inform] **serve personally or by mail a written notice to** each party as provided in ORS 183.413 (2).

(6) At the hearing, the person about whom the hearing is being held shall have the right:

(a) To appear at all proceedings held pursuant to this section, except board deliberations.

(b) To cross-examine all witnesses appearing to testify at the hearing.

(c) To subpoena witnesses and documents as provided in ORS 161.395.

(d) To be represented by suitable legal counsel possessing skills and experience commensurate with the nature and complexity of the case, to consult with counsel prior to the hearing and, if financially eligible, to have suitable counsel appointed at state expense.

(e) To examine all information, documents and reports which the board considers. If then available to the board, the information, documents and reports shall be disclosed to the person so as to allow examination prior to the hearing.

(7) A record shall be kept of all hearings before the board, except board deliberations.

(8) Upon request of any party before the board, or on its own motion, the board may continue a hearing for a reasonable period not to exceed 60 days to obtain additional information or testimony or for other good cause shown.

(9) Within 15 days following the conclusion of the hearing, the board shall provide to the person, the attorney representing the person, the Attorney General or other attorney representing the state, if any, written notice of the board's decision.

(10) The burden of proof on all issues at hearings of the board shall be by a preponderance of the evidence.

(11) If the board determines that the person about whom the hearing is being held is financially eligible, the board shall appoint suitable counsel to represent the person. Counsel so appointed shall be an attorney who satisfies the professional qualifications established by the Public Defense Services Commission under ORS 151.216. The public defense services executive director shall determine and allow fair compensation for counsel appointed under this subsection and the reasonable expenses of the person in respect to the hearing. Compensation payable to appointed counsel shall not be less than the applicable compensation level established under ORS 151.216. The compensation and expenses so allowed shall be paid by the public defense services executive director from funds available for the purpose.

(12) The Attorney General may represent the state at contested hearings before the board unless the district attorney of the county from which the person was committed elects to represent the state. The district attorney of the county from which the person was committed shall cooperate with the Attorney General in securing the material necessary for presenting a contested hearing before the board. If the district attorney elects to represent the state, the district attorney shall give timely written notice of such election to the Attorney General, the board and the attorney representing the person.

SECTION 8. ORS 181.661 is amended to read:

181.661. When the Department of Public Safety Standards and Training denies application or certification or the department or Board on Public Safety Standards and Training believes there is a reasonable basis for suspending or revoking the certification of an instructor or a public safety officer, except a youth correction officer or fire service professional, notice and opportunity for a hearing shall be provided in accordance with rules approved by the board and in accordance with ORS 183.415 **and section 4 of this 2007 Act** prior to suspension or revocation.

SECTION 9. ORS 183.310 is amended to read:

183.310. As used in this chapter:

(1) "Agency" means any state board, commission, department, or division thereof, or officer authorized by law to make rules or to issue orders, except those in the legislative and judicial branches.

(2)(a) "Contested case" means a proceeding before an agency:

(A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard;

(B) Where the agency has discretion to suspend or revoke a right or privilege of a person;

(C) For the suspension, revocation or refusal to renew or issue a license where the licensee or applicant for a license demands such hearing; or

[*(D) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415, 183.425, 183.450, 183.460 and 183.470.]*

(D) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415, 183.425, 183.450, 183.460 and 183.470 and section 4 of this 2007 Act.

(b) "Contested case" does not include proceedings in which an agency decision rests solely on the result of a test.

(3) "Economic effect" means the economic impact on affected businesses by and the costs of compliance, if any, with a rule for businesses, including but not limited to the costs of equipment, supplies, labor and administration.

(4) "Hearing officer" includes an administrative law judge.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.

(6)(a) "Order" means any agency action expressed orally or in writing directed to a named person or named persons, other than employees, officers or members of an agency. "Order" includes any agency determination or decision issued in connection with a contested case proceeding. "Order" includes:

(A) Agency action under ORS chapter 657 making determination for purposes of unemployment compensation of employees of the state;

(B) Agency action under ORS chapter 240 which grants, denies, modifies, suspends or revokes any right or privilege of an employee of the state; and

(C) Agency action under ORS 468B.050 to issue a permit.

(b) "Final order" means final agency action expressed in writing. "Final order" does not include any tentative or preliminary agency declaration or statement that:

(A) Precedes final agency action; or

(B) Does not preclude further agency consideration of the subject matter of the statement or declaration.

(7) "Party" means:

(a) Each person or agency entitled as of right to a hearing before the agency;

(b) Each person or agency named by the agency to be a party; or

(c) Any person requesting to participate before the agency as a party or in a limited party status which the agency determines either has an interest in the outcome of the agency's proceeding or represents a public interest in such result. The agency's determination is subject to judicial review

in the manner provided by ORS 183.482 after the agency has issued its final order in the proceedings.

(8) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.

(9) "Rule" means any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) Unless a hearing is required by statute, internal management directives, regulations or statements which do not substantially affect the interests of the public:

(A) Between agencies, or their officers or their employees; or

(B) Within an agency, between its officers or between employees.

(b) Action by agencies directed to other agencies or other units of government which do not substantially affect the interests of the public.

(c) Declaratory rulings issued pursuant to ORS 183.410 or 305.105.

(d) Intra-agency memoranda.

(e) Executive orders of the Governor.

(f) Rules of conduct for persons committed to the physical and legal custody of the Department of Corrections, the violation of which will not result in:

(A) Placement in segregation or isolation status in excess of seven days.

(B) Institutional transfer or other transfer to secure confinement status for disciplinary reasons.

(C) Disciplinary procedures adopted pursuant to ORS 421.180.

(10) "Small business" means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses and which has 50 or fewer employees.

SECTION 10. ORS 183.315 is amended to read:

183.315. (1) The provisions of **section 4 of this 2007 Act and** ORS 183.410, 183.415, 183.425, 183.440, 183.450, 183.452, 183.458, 183.460, 183.470 and 183.480 do not apply to local government boundary commissions created pursuant to ORS 199.425 or 199.430, the Department of Revenue, State Accident Insurance Fund Corporation, Department of Consumer and Business Services with respect to its functions under ORS chapters 654 and 656, Psychiatric Security Review Board or State Board of Parole and Post-Prison Supervision.

(2) This chapter does not apply with respect to actions of the Governor authorized under ORS chapter 240 and ORS 396.125 or actions of the Adjutant General authorized under ORS 396.160 (14).

(3) The provisions of **section 4 of this 2007 Act and** ORS 183.410, 183.415, 183.425, 183.440, 183.450, 183.452, 183.458 and 183.460 do not apply to the Employment Appeals Board or the Employment Department.

(4) The Employment Department shall be exempt from the provisions of this chapter to the extent that a formal finding of the United States Secretary of Labor is made that such provision conflicts with the terms of the federal law, acceptance of which by the state is a condition precedent to continued certification by the United States Secretary of Labor of the state's law.

(5) The provisions of **section 4 of this 2007 Act and** ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490 to 183.500 do not apply to orders issued to persons who:

(a) Have been committed pursuant to ORS 137.124 to the custody of the Department of Corrections or are otherwise confined in a Department of Corrections facility; or

(b) Seek to visit an inmate confined in a Department of Corrections facility.

(6) **Section 4 of this 2007 Act and** ORS 183.410, 183.415, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.482 (3) do not apply to the Public Utility Commission. Notwithstanding ORS 183.480 and except as provided in ORS 757.495 and 759.390, only a party to a hearing before the Public Utility Commission is entitled to seek judicial review of an order of the commission.

(7) The provisions of this chapter do not apply to the suspension, cancellation or termination of an apprenticeship or training agreement under ORS 660.060.

(8) The provisions of ORS 183.413 to 183.497 do not apply to administrative proceedings conducted under rules adopted by the Secretary of State under ORS 246.190.

SECTION 11. ORS 183.480 is amended to read:

183.480. (1) Except as provided in [ORS 183.415 (5)(b)] **section 4 (3)(b) of this 2007 Act**, any person adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final order, whether such order is affirmative or negative in form. A petition for rehearing or reconsideration need not be filed as a condition of judicial review unless specifically otherwise provided by statute or agency rule.

(2) Judicial review of final orders of agencies shall be solely as provided by ORS 183.482, 183.484, 183.490 and 183.500.

(3) No action or suit shall be maintained as to the validity of any agency order except a final order as provided in this section and ORS 183.482, 183.484, 183.490 and 183.500 or except upon showing that the agency is proceeding without probable cause, or that the party will suffer substantial and irreparable harm if interlocutory relief is not granted.

(4) Judicial review of orders issued pursuant to ORS 813.410 shall be as provided by ORS 813.410.

SECTION 12. ORS 279B.425 is amended to read:

279B.425. (1) The procedure for appeal from the denial, revocation or revision of a prequalification under ORS 279B.125, or from a debarment under ORS 279B.130, shall be in accordance with this section and is not subject to ORS chapter 183 except when specifically provided by this section.

(2) Upon receipt of a notice from a contracting agency of a prequalification decision under ORS 279B.125 or of a decision to debar under ORS 279B.130, a prospective bidder or proposer that wishes to appeal the decision shall, within three business days after receipt of the notice, notify the contracting agency that the prospective bidder or proposer appeals the decision as provided in this section.

(3) Immediately upon receipt of the prospective bidder's or proposer's notice of appeal, the contracting agency shall:

(a) If the contracting agency is a state contracting agency, notify the Director of the Oregon Department of Administrative Services.

(b) If the contracting agency is a local contracting agency, notify the appropriate local contract review board.

(4) Upon the receipt of notice from the contracting agency under subsection (3) of this section, the director or board shall promptly notify the person appealing and the contracting agency of the time and place of the hearing. The director or board shall conduct the hearing and decide the appeal within 30 days after receiving the notice from the contracting agency. The director or board shall set forth in writing the reasons for the hearing decision.

(5) At the hearing the director or board shall consider de novo the notice of denial, revocation or revision of a prequalification or the notice of debarment, the standards of responsibility listed in ORS 279B.110 (2) on which the contracting agency based the denial, revocation or revision of the prequalification or the reasons listed in ORS 279B.130 (2) on which the contracting agency based the debarment, and any evidence provided by the parties. In all other respects, a hearing before the director shall be conducted in the same manner as a contested case under ORS [183.415 (3) to (6) and (9),] 183.425, 183.440, 183.450 and 183.452 **and section 4 (1) to (4) and (7) of this 2007 Act.** Hearings before a board shall be conducted under rules of procedure adopted by the board.

(6) The director or board may allocate the director's or board's costs for the hearing between the person appealing and the contracting agency whose prequalification or debarment decision is being appealed. The allocation shall be based upon facts found by the director or board and stated in the final order that, in the director's or board's opinion, warrant such allocation of costs. If the final order does not allocate the costs for the hearing, the costs shall be paid as follows:

(a) If the decision to deny, revoke or revise a prequalification of a person as a bidder or the decision to debar a person is upheld, the costs shall be paid by the person appealing the decision.

(b) If the decision to deny, revoke or revise a prequalification of a person as a bidder or the decision to debar a person is reversed, the costs shall be paid by the contracting agency whose prequalification or debarment decision is the subject of the appeal.

(7) A decision of the director or board may be reviewed only upon a petition, filed within 15 days after the date of the decision, in the circuit court of the county in which the director or board has its principal office. The circuit court shall reverse or modify the decision only if it finds:

(a) The decision was obtained through corruption, fraud or undue means;

(b) There was evident partiality or corruption that operated to the substantial prejudice of the petitioner on the part of the director or board or any of the board's members; or

(c) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the decision, and the miscalculation or mistake operated to the substantial prejudice of the petitioner.

(8) The procedure provided in this section is the exclusive means of judicial review of the decision of the director or board. The judicial review provisions of ORS 183.480 and writs of review and mandamus as provided in ORS chapter 34, and other legal, declaratory and injunctive remedies, are not available.

(9) The circuit court may stay the letting of the contract that is the subject of the petition in the same manner as a suit in equity. When the court determines that there has been an improper debarment or denial, revocation or revision of a prequalification and the contract has been let, the court may proceed to take evidence to determine the damages, if any, suffered by the petitioner and may award such damages as the court may find as a judgment against the director or board. The court may award costs and attorney fees to the prevailing party.

SECTION 13. ORS 279C.450 is amended to read:

279C.450. (1) The procedure for appeal from a disqualification or denial, revocation or revision of a prequalification by a contracting agency shall be in accordance with this section and is not subject to ORS chapter 183 except when specifically provided by this section.

(2) Promptly upon receipt of notice of appeal from a contracting agency as provided for by ORS 279C.445, the Director of the Oregon Department of Administrative Services or the local contract review board shall notify the person appealing and the contracting agency of the time and place of the hearing. The director or board shall conduct the hearing and decide the appeal within 30 days after receiving the notification from the contracting agency. The director or board shall set forth in writing the reasons for the decision.

(3) In the hearing the director or board shall consider de novo the notice of disqualification or denial, revocation or revision of a prequalification, the reasons listed in ORS 279C.440 (2) on which the contracting agency based the disqualification or the standards of responsibility listed in ORS 279C.375 (3)(b) on which the contracting agency based the denial, revocation or revision of the prequalification and any evidence provided by the parties. In all other respects, a hearing before the director shall be conducted in the same manner as a contested case under ORS [183.415 (3) to (6) and (9),] 183.425, 183.440, 183.450 and 183.452 **and section 4 (1) to (4) and (7) of this 2007 Act.**

(4) The director may allocate the director's cost for the hearing between the person appealing and the contracting agency whose disqualification or prequalification decision is being appealed. The allocation shall be based upon facts found by the director and stated in the final order that, in the director's opinion, warrant such allocation of the costs. If the final order does not allocate the director's costs for the hearing, the costs shall be paid as follows:

(a) If the decision to disqualify or deny, revoke or revise a prequalification of a person is upheld, the director's costs shall be paid by the person appealing the disqualification or prequalification decision.

(b) If the decision to disqualify or deny, revoke or revise a prequalification of a person as a bidder is reversed by the director, the director's costs shall be paid by the contracting agency whose disqualification or prequalification decision is the subject of the appeal.

(5) The decision of the director or board may be reviewed only upon a petition, filed within 15 days after the date of the decision, in the circuit court of the county in which the director or board has its principal office. The circuit court shall reverse or modify the decision only if it finds:

- (a) The decision was obtained through corruption, fraud or undue means.
- (b) There was evident partiality or corruption on the part of the director or board or any of its members.
- (c) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the decision.

(6) The procedure provided in this section is the exclusive means of judicial review of the decision of the director or board. The judicial review provisions of ORS 183.480 and writs of review and mandamus as provided in ORS chapter 34, and other legal, declaratory and injunctive remedies, are not available.

(7) The circuit court may, in its discretion, stay the letting of the contract that is the subject of the petition in the same manner as a suit in equity. When the court determines that there has been an improper disqualification or denial, revocation or revision of a prequalification and the contract has been let, the court may proceed to take evidence to determine the damages, if any, suffered by the petitioner and award such damages as the court may find as a judgment against the director or board. The court may award costs and attorney fees to the prevailing party.

SECTION 14. ORS 351.088 is amended to read:

351.088. Notwithstanding ORS chapter 183, the State Board of Higher Education or any state institution of higher education under the jurisdiction of the board may, by rule, establish adjudicative procedures that are consistent with federal and state constitutional requirements and other provisions of law. The adjudicative procedures shall be consistent with ORS 183.413 to 183.497 and 183.502 whenever the type of hearing or procedure required is substantially of the character that would necessitate the procedures required by ORS [183.415, 183.425, 183.450, 183.460 or] **183.413 to 183.470**.

SECTION 15. ORS 352.360 is amended to read:

352.360. (1) The State Board of Higher Education may enact such regulations as it shall deem convenient or necessary to provide for the policing, control and regulation of traffic and parking of vehicles on the property of any institution under the jurisdiction of the board. Such regulations may provide for the registration of vehicles, the designation of parking areas, and the assessment and collection of reasonable fees and charges for parking, and shall be filed in accordance with the provisions of ORS chapter 183. The board may require that before a quarterly or yearly parking privilege for any vehicle is granted to any full-time or part-time student to use board property, the student must show that the vehicle is operated by a student holding a valid driver's license, that the vehicle is currently registered and that the student driving the vehicle is insured under a motor vehicle liability insurance policy that meets the requirements described under ORS 806.080 or that the student or owner of the vehicle has provided the Department of Transportation with other satisfactory proof of compliance with the financial responsibility requirements of this state.

(2) The regulations enacted pursuant to subsection (1) of this section shall be enforced administratively under procedures adopted by the board for each institution under its jurisdiction. Administrative and disciplinary sanctions may be imposed upon students, faculty and staff for violation of the regulations, including but not limited to, a reasonable monetary penalty which may be deducted from student deposits, and faculty or staff salaries or other funds in the possession of the institution. The board shall provide opportunity for hearing for the determination of controversies in connection with imposition of fines or penalties. The board may prescribe procedures for such hearings despite the provisions of ORS [183.415, 183.450, 183.452, 183.460 and] **183.413 to 183.470**. Persons other than students, faculty or staff may voluntarily submit to the hearing procedures prescribed by the board, and shall be bound by the results thereof. The powers granted to the board by this section are supplemental to the existing powers of the board with respect to the government of activities of students, faculty and staff and the control and management of property under its jurisdiction.

(3) The regulations enacted pursuant to subsection (1) of this section may also be enforced by the impoundment of vehicles, and a reasonable fee may be enacted for the cost of impoundment and storage, if any, prior to the release of the vehicles to their owners.

(4) All fees and charges for parking privileges and violations are hereby continuously appropriated to the State Board of Higher Education to be used to defray the costs of constructing bicycle racks and bicycle lanes and of traffic control, enforcement of traffic and parking regulations, and maintenance and operation of parking facilities and for the purpose of acquiring and constructing additional parking facilities for vehicles at the various institutions, departments or activities under the control of the board, and may also be credited to the Higher Education Bond Sinking Fund provided for in ORS 351.460. Parking fees shall be established at levels no greater than those required to finance the construction, operation and maintenance of parking facilities on the same campus of the state institution of higher education on which the parking is provided. Notwithstanding ORS 351.072, parking fees or changes in fees shall be adopted by rule of the state board subject to the procedure for rules adopted in ORS chapter 183.

(5) Every peace officer may enforce the regulations made by the board under subsection (1) of this section. The board, for the purpose of enforcing its rules and regulations governing traffic control, may appoint peace officers who shall have the same authority as other peace officers as defined in ORS 133.005.

(6) The State Board of Higher Education and any municipal corporation or any department, agency or political subdivision of this state may enter into agreements or contracts with each other for the purpose of providing a uniform system of enforcement of the rules and regulations of the board enacted pursuant to subsection (1) of this section.

(7) In proceedings brought to enforce regulations enacted pursuant to subsection (1) of this section, it shall be sufficient to charge the defendant by an unsworn written notice in accordance with the provisions of ORS 221.333. In any case in which the defendant is not subject to and does not voluntarily submit to the hearing procedures prescribed under subsection (2) of this section, proceedings to enforce regulations enacted pursuant to subsection (1) of this section shall be brought in the name of the board in a circuit court, a justice court or a city court for offenses committed within the territorial jurisdiction of such court. Such courts shall have concurrent jurisdiction over offenses committed within their respective jurisdictions. All fines, penalties and court costs recovered shall be paid to the clerk of the court involved and shall be disposed of as provided in ORS 153.630.

SECTION 16. ORS 701.145 is amended to read:

701.145. For a claim described in ORS 701.139 (1) involving work on a residential structure or an appurtenance thereto, a claim described in ORS 701.139 (2) involving work on a small commercial structure or an appurtenance thereto that is not resolved under ORS 701.146 or an owner's claim described in ORS 701.139 (4) involving work on a large commercial structure or an appurtenance thereto that is not resolved under ORS 701.146:

(1) The person having the claim must file with the Construction Contractors Board a statement of the claim in a form prescribed by the board.

(2) The board may suspend processing of the claim if:

(a) The same facts and issues involved in the claim have been submitted to a court of competent jurisdiction for determination or have been submitted to any other entity authorized by law or the parties to effect a resolution or settlement; or

(b) The board determines that the nature or complexity of the claim is such that a court is the appropriate forum for the adjudication of the claim.

(3) The board may dismiss or close the claim as established by rule of the board if any of the following conditions apply:

(a) The claimant does not permit the contractor against whom the claim is filed to be present at an on-site investigation made by the board.

(b) The board determines that the contractor against whom the claim is filed is capable of complying with recommendations made by the board relative to the claim, but the claimant does not

permit the contractor to comply with the recommendations. The board may refuse to accept or further process a claim under this paragraph only if the contractor was licensed at the time the work was first performed and is licensed at the time the board makes its recommendations.

(c) The amount in controversy is less than an amount adopted by the board and not more than \$250.

(4) Upon acceptance of the statement of claim, the board shall give notice to the contractor against whom the claim is made and shall initiate proceedings to determine the validity of the claim. If, after investigation, the board determines that a violation of this chapter or of any rule adopted thereunder has occurred, or damage has been caused by the contractor, the board may recommend to the contractor such action as the board considers appropriate to compensate the claimant. If the contractor performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board. If a claim is for less than \$1,000, the board may process the claim without conducting an on-site investigation.

(5) Subject to ORS 701.148, if the board is unable to resolve the claim under subsection (4) of this section, the board may issue a contested case notice under ORS 183.415 and:

(a) Issue a proposed default order under [ORS 183.415] **section 4 of this 2007 Act** to become effective only if a party does not request a contested case hearing; or

(b) Refer the matter for hearing.

(6) The board shall send a copy of the notice and any proposed order described in subsection (5) of this section to the surety on the contractor bond required by ORS 701.085.

SECTION 17. ORS 776.129 is amended to read:

776.129. (1) When the Oregon Board of Maritime Pilots establishes rates described in ORS 776.115 (5), the board shall contract with and compensate the Public Utility Commission of Oregon for the use of administrative law judges assigned by the commission to conduct the rate proceeding. Notwithstanding ORS [183.410, 183.415, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.480] **183.413 to 183.470**, an administrative law judge shall conduct the proceeding in compliance with procedures adopted by the board by rule. The administrative law judge and the board may receive and consider recommendations made by the Economic and Community Development Department and the Port of Portland.

(2) The board may defray the costs and expenses of the hearing by assessing, in its final order, all or a portion of the costs and expenses of the hearing to a party to the hearing.

SECTION 18. ORS 813.410 is amended to read:

813.410. (1) If the Department of Transportation receives from a police officer a report that is in substantial compliance with ORS 813.120, the department shall suspend the driving privileges of the person in this state on the 30th day after the date of arrest or, if the report indicates that the person failed a blood test, on the 60th day after receipt of the report, unless, at a hearing described under this section, the department determines that the suspension would not be valid as described in this section. A suspension of driving privileges imposed under this subsection shall be for a period of time established under ORS 813.420.

(2) If the department receives from a police officer a report pursuant to ORS 813.120 that discloses that the person holds a commercial driver license and that the person was driving a motor vehicle or commercial motor vehicle and refused to submit to a test under ORS 813.100 or that the person was driving a commercial motor vehicle and submitted to a breath or blood test and the person's blood, as shown by the test, had 0.04 percent or more by weight of alcohol, the department shall suspend the person's commercial driver license on the 30th day after the date of arrest or, if the report indicates that the person failed a blood test, on the 60th day after receipt of the report, unless, at a hearing described under this section, the department determines that the suspension would not be valid as described in this section. A commercial driver license suspension imposed under this subsection shall be for a period of time established under ORS 813.404.

(3) If within 10 days from the date of arrest, or, if the person fails a blood test, within 10 days from the date the department sends notice of suspension, the department receives a written request for a hearing from a person whose driving privileges or commercial driver license the department

proposes to suspend under this section, the department shall provide a hearing in accordance with this section. Except as otherwise provided under this section, a hearing held by the department under this section shall be subject to the provisions for contested cases, other than appeal provisions, under ORS chapter 183. The applicable appeal provisions are as provided under ORS 813.450 and section 24, chapter 672, Oregon Laws 1985. Notwithstanding ORS 809.430, the department is not required to give any notice of intent to suspend or suspension in addition to that provided under ORS 813.100.

(4) A hearing required by this section is subject to all of the following:

(a) The hearing shall be before an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605.

(b) Unless there is an agreement between the person and the department that the hearing be conducted elsewhere, the hearing shall be held either in the county where the alleged offense occurred or at any place within 100 miles of the place where the offense is alleged to have occurred, as established by the department by rule.

(c) The department may authorize the administrative law judge to issue a final order in any case.

(d) A person who requests a hearing under this section and who fails, without just cause, to appear in person or through an attorney waives the right to a hearing [*notwithstanding the provisions of ORS 183.415*]. If a person waives a right to a hearing under this paragraph, the department is not required to make any showing at hearing.

(e) Except as provided in ORS 813.440 or upon remand under ORS 813.450, the department shall hold the hearing and issue a final order within 30 days of the date of the arrest or, if the person fails a blood test, within 60 days from the date the department received the report of the failure.

(f) In connection with the hearing, the department or its authorized representative may administer oaths and shall issue subpoenas for the attendance of witnesses at the hearing requested by the person or the department and the production of relevant documents.

(g) The hearing shall be recorded by whatever means may be determined by the department and shall include testimony and exhibits, if any. The record of the proceedings shall not be transcribed unless requested by a party to the proceeding.

(5) This subsection shall be narrowly construed so as to effect the legislative purpose of limiting the scope of hearings under this section. The scope of a hearing under this section shall be limited to whether the suspension is valid as described in this subsection. A suspension under this section is valid if all of the following requirements have been met:

(a) The person, at the time the person was requested to submit to a test under ORS 813.100, was under arrest for driving while under the influence of intoxicants in violation of ORS 813.010 or a municipal ordinance.

(b) The police had reasonable grounds to believe, at the time the request was made, that the person arrested had been driving under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance.

(c) The person refused a test under ORS 813.100, or took a breath or blood test and the test disclosed that the level of alcohol in the person's blood at the time of the test was:

- (A) 0.08 percent or more by weight if the person was not driving a commercial motor vehicle;
- (B) 0.04 percent or more by weight if the person was driving a commercial motor vehicle; or
- (C) Any amount if the person was under 21 years of age.

(d) If the report under ORS 813.120 indicates that the person was driving a commercial motor vehicle, the vehicle was in fact a commercial motor vehicle as defined in ORS 801.208.

(e) The person had been informed under ORS 813.100 of rights and consequences as described under ORS 813.130.

(f) The person was given written notice required under ORS 813.100.

(g) If the person arrested submitted to a test under ORS 813.100, the person administering the test was qualified to administer the test under ORS 813.160.

(h) If the person arrested submitted to a test under ORS 813.100, the methods, procedures and equipment used in the test complied with requirements under ORS 813.160.

(6) A suspension imposed under this section shall remain in effect pending any appeal or remand of a final order issued under this section and there shall be no stay of the suspension pending appeal or remand.

(7) Unless a person fails, without just cause, to appear in person or through an attorney at a hearing requested under this section, a person shall have the right to appeal any final order by the department after a hearing under this section by filing a petition. The following apply to this subsection:

(a) The person shall file the petition in the circuit court for the county where the person resides or, if the person does not reside in Oregon, in the circuit court of the county in which the arrest took place within 30 days after issuance of the final order of the department.

(b) The court upon receipt of the petition shall set the matter for hearing upon 10 days' notice to the department and the petitioner unless hearing is waived by both the department and the petitioner.

SECTION 19. Section 4 of this 2007 Act and the amendments to ORS 35.520, 58.355, 161.346, 181.661, 183.310, 183.315, 183.413, 183.415, 183.480, 279B.425, 279C.450, 351.088, 352.360, 701.145, 776.129 and 813.410 by sections 1, 2 and 5 to 18 of this 2007 Act apply only to contested case proceedings commenced by the giving of notice as described in ORS 183.415 on or after the effective date of this 2007 Act. Any contested case proceeding commenced by the giving of notice as described in ORS 183.415 before the effective date of this 2007 Act shall continue to be governed by ORS 35.520, 58.355, 161.346, 181.661, 183.310, 183.315, 183.413, 183.415, 183.480, 279B.425, 279C.450, 351.088, 352.360, 701.145, 776.129 and 813.410, as in effect immediately before the effective date of this 2007 Act.

Passed by House April 10, 2007

Received by Governor:

..... M., , 2007

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Chief Clerk of House

Approved:

..... M., , 2007

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Speaker of House

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Governor

Passed by Senate May 17, 2007

Filed in Office of Secretary of State:

..... M., , 2007

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Secretary of State