

**Enrolled**  
**House Bill 2667**

Sponsored by COMMITTEE ON JUDICIARY (at the request of Office of Public Defense Services)

CHAPTER .....

AN ACT

Relating to judicial review; amending ORS 34.330 and 144.335.

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

**SECTION 1.** ORS 144.335 is amended to read:

144.335. (1) A person over whom the State Board of Parole and Post-Prison Supervision exercises its jurisdiction may seek judicial review of a final order of the board as provided in this section if:

- (a) The person is adversely affected or aggrieved by a final order of the board; and
- (b) The person has exhausted administrative review as provided by board rule.

(2) A person requesting administrative review shall provide the person's current mailing address in the request. The board shall mail its order disposing of the request for administrative review to the person at that address, unless the person has otherwise notified the board in writing of a change of address.

(3) The order of the board need not be in any special form, and the order is sufficient for purposes of judicial review if it appears that the board acted within the scope of the board's authority. The Court of Appeals may affirm, reverse or remand the order on the same basis as provided in ORS 183.482 (8). The filing of the petition shall not stay the board's order, but the board may do so, or the court may order a stay upon application on such terms as it deems proper.

(4) If a person described in subsection (1) of this section seeks judicial review of a final order of the board, the person shall file a petition for judicial review with the Court of Appeals within 60 days after the date the board mails the order disposing of the person's request for administrative review. The person shall serve a copy of the petition for judicial review on the board.

(5) Within 30 days after being served with a copy of the petition for judicial review, or such further time as the court may allow, the board shall:

- (a) Submit to the court the record of the proceeding or, if the petitioner agrees, a shortened record; and
- (b) Deliver a copy of the record to the petitioner or the petitioner's attorney, if the petitioner is represented by an attorney.

*[(6) Within 60 days after being served with a copy of the record, or such further time as the court may allow, the petitioner shall file a motion for leave to proceed with judicial review based on a showing in the motion that a substantial question of law is presented for review.]*

*[(7) Notwithstanding ORS 2.570, the Chief Judge, or other judge of the Court of Appeals designated by the Chief Judge, may, on behalf of the Court of Appeals, determine whether a motion for leave to proceed with judicial review under subsection (6) of this section presents a substantial question of law and may dismiss the judicial review if the motion does not present a substantial question of law.]*

*A dismissal under this subsection constitutes a decision on the merits of the petitioner's issues on judicial review.]*

*[(8) If the Chief Judge, or other judge of the Court of Appeals designated by the Chief Judge, determines under subsection (7) of this section that the motion presents a substantial question of law, the court shall order the judicial review to proceed.]*

[(9)] (6) At any time after submission of the petitioner's brief, the court, on its own motion or on motion of the board, without submission of the board's brief and without oral argument, may summarily affirm the board's order if the court determines that the judicial review does not present a substantial question of law. Notwithstanding ORS 2.570, the Chief Judge, or other judge of the Court of Appeals designated by the Chief Judge, may, on behalf of the Court of Appeals, deny or, if the petitioner does not oppose the motion, grant the board's motion for summary affirmance. A summary affirmance under this subsection constitutes a decision on the merits of the petitioner's issues on judicial review.

[(10)] (7) During the pendency of judicial review of an order, if the board withdraws the order for the purpose of reconsideration and thereafter issues an order on reconsideration, and the petitioner wishes to proceed with the judicial review, the petitioner need not seek administrative review of the order on reconsideration and need not file a new petition for judicial review. The petitioner shall file, within a time established by the court, a notice of intent to proceed with judicial review.

[(11)] (8) In the case of disputed allegations of irregularities in procedure before the board not shown in the record that, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a master appointed by the court to take evidence and make findings of fact upon them.

[(12)] (9) If the court determines that *[the motion]* **a brief** filed *[under subsection (6) of this section]* **by the petitioner**, when liberally construed, fails to state a colorable claim for review *[of the board's order]*, the court may order the petitioner to pay, in addition to the board's recoverable costs, attorney fees incurred by the board not to exceed \$100. If the petitioner moves to dismiss the petition *[before expiration of the time provided]* **prior to a summary affirmance described** in subsection (6) of this section, the court may not award costs or attorney fees to the board.

[(13)] (10) Upon request by the board, the Department of Corrections may draw from or charge to the petitioner's trust account and pay to the board the amount of any costs or attorney fees awarded to the board by the court in any judicial review under this section.

**(11) If the petitioner prevails on judicial review and is represented by an attorney funded by the Public Defense Services Commission, any recoverable costs shall be paid to the commission.**

**SECTION 2.** ORS 34.330 is amended to read:

34.330. A person may not prosecute a writ of habeas corpus if:

(1) The person is imprisoned or restrained by virtue of process issued by a court of the United States, or a judge, commissioner or other officer thereof, in cases where such courts, or judges or officers thereof, have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of actions, suits or other proceedings in such court, or before such commissioner or other officer.

(2) The person is imprisoned or restrained by virtue of the judgment of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon such judgment.

(3) Except as provided in ORS 138.530, the person is eligible to obtain post-conviction relief pursuant to ORS 138.510 to 138.680.

(4) The person is eligible to seek judicial review of a final order of the State Board of Parole and Post-Prison Supervision under ORS 144.335 but the person fails to seek judicial review of the order in a timely manner.

(5) The person seeks judicial review of a final order of the board under ORS 144.335 but the Court of Appeals:

[(a) Dismisses the judicial review on the grounds that the motion for leave to proceed with judicial review described in ORS 144.335 does not present a substantial question of law;]

[(b)] (a) Summarily affirms the order of the board on the grounds that the [motion for leave to proceed with judicial review described in ORS 144.335 does not] **person failed to** present a substantial question of law;

[(c)] (b) Otherwise disposes of the judicial review on the merits of the petitioner's issues on judicial review; or

[(d)] (c) Dismisses the judicial review because of a procedural defect.

**Passed by House May 7, 2007**

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Chief Clerk of House

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Speaker of House

**Passed by Senate May 25, 2007**

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President of Senate

**Received by Governor:**

.....M.,....., 2007

**Approved:**

.....M.,....., 2007

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Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2007

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Secretary of State