

House Bill 2667

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

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**.

Eliminates motion required to obtain judicial review of orders of State Board of Parole and Post-Prison Supervision.

A BILL FOR AN ACT

1
2 Relating to judicial review; amending ORS 34.330 and 144.335.

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

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

5 144.335. (1) A person over whom the State Board of Parole and Post-Prison Supervision exercises
6 its jurisdiction may seek judicial review of a final order of the board as provided in this section if:

7 (a) The person is adversely affected or aggrieved by a final order of the board; and

8 (b) The person has exhausted administrative review as provided by board rule.

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

13 (3) The order of the board need not be in any special form, and the order is sufficient for pur-
14 poses of judicial review if it appears that the board acted within the scope of the board's authority.
15 The Court of Appeals may affirm, reverse or remand the order on the same basis as provided in ORS
16 183.482 (8). The filing of the petition shall not stay the board's order, but the board may do so, or
17 the court may order a stay upon application on such terms as it deems proper.

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

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

24 (a) Submit to the court the record of the proceeding or, if the petitioner agrees, a shortened
25 record; and

26 (b) Deliver a copy of the record to the petitioner or the petitioner's attorney, if the petitioner
27 is represented by an attorney.

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

31 *[(7) Notwithstanding ORS 2.570, the Chief Judge, or other judge of the Court of Appeals designated*

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 *by the Chief Judge, may, on behalf of the Court of Appeals, determine whether a motion for leave to*
 2 *proceed with judicial review under subsection (6) of this section presents a substantial question of law*
 3 *and may dismiss the judicial review if the motion does not present a substantial question of law. A*
 4 *dismissal under this subsection constitutes a decision on the merits of the petitioner's issues on judicial*
 5 *review.]*

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

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

17 [(10) (7) During the pendency of judicial review of an order, if the board withdraws the order
 18 for the purpose of reconsideration and thereafter issues an order on reconsideration, and the
 19 petitioner wishes to proceed with the judicial review, the petitioner need not seek administrative
 20 review of the order on reconsideration and need not file a new petition for judicial review. The
 21 petitioner shall file, within a time established by the court, a notice of intent to proceed with judi-
 22 cial review.

23 [(11) (8) In the case of disputed allegations of irregularities in procedure before the board not
 24 shown in the record that, if proved, would warrant reversal or remand, the Court of Appeals may
 25 refer the allegations to a master appointed by the court to take evidence and make findings of fact
 26 upon them.

27 [(12) (9) If the court determines that *[the motion]* **a brief** filed *[under subsection (6) of this*
 28 *section]* **by the petitioner**, when liberally construed, fails to state a colorable claim for review *[of*
 29 *the board's order]*, the court may order the petitioner to pay, in addition to the board's recoverable
 30 costs, attorney fees incurred by the board not to exceed \$100. If the petitioner moves to dismiss the
 31 petition *[before expiration of the time provided]* **prior to a summary affirmance described** in sub-
 32 section (6) of this section, the court may not award costs or attorney fees to the board.

33 [(13) (10) Upon request by the board, the Department of Corrections may draw from or charge
 34 to the petitioner's trust account and pay to the board the amount of any costs or attorney fees
 35 awarded to the board by the court in any judicial review under this section.

36 **(11) If the petitioner prevails on judicial review and is represented by an attorney funded**
 37 **by the office of public defense services, any recoverable costs shall be paid to the office of**
 38 **public defense services.**

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

40 34.330. A person may not prosecute a writ of habeas corpus if:

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

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

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

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

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

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

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

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

17 [(d)] (c) Dismisses the judicial review because of a procedural defect.
18
