

SENATE AMENDMENTS TO RESOLVE CONFLICTS TO A-ENGROSSED HOUSE BILL 2822

By COMMITTEE ON JUDICIARY

June 6

1 On page 1 of the printed A-engrossed bill, line 2, after the semicolon insert “creating new pro-
2 visions; and”.

3 On page 5, after line 4, insert:

4 “**SECTION 4. If House Bill 2423 becomes law, section 1 of this 2007 Act (amending ORS**
5 **183.415) is repealed.**

6 “**SECTION 5.** If House Bill 2423 becomes law, ORS 183.482, as amended by section 2 of this 2007
7 Act, is amended to read:

8 “183.482. (1) Jurisdiction for judicial review of contested cases is conferred upon the Court of
9 Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The
10 petition shall be filed within 60 days only following the date the order upon which the petition is
11 based is served unless otherwise provided by statute. If a petition for rehearing has been filed, then
12 the petition for review shall be filed within 60 days only following the date the order denying the
13 petition for rehearing is served. If the agency does not otherwise act, a petition for rehearing or
14 reconsideration shall be deemed denied the 60th day following the date the petition was filed, and
15 in such cases, petition for judicial review shall be filed within 60 days only following such date. Date
16 of service shall be the date on which the agency delivered or mailed its order in accordance with
17 ORS 183.470.

18 “(2) The petition shall state the nature of the order the petitioner desires reviewed, and shall
19 state whether the petitioner was a party to the administrative proceeding, was denied status as a
20 party or is seeking judicial review as a person adversely affected or aggrieved by the agency order.
21 In the latter case, the petitioner shall, by supporting affidavit, state the facts showing how the
22 petitioner is adversely affected or aggrieved by the agency order. Before deciding the issues raised
23 by the petition for review, the Court of Appeals shall decide, from facts set forth in the affidavit,
24 whether or not the petitioner is entitled to petition as an adversely affected or an aggrieved person.
25 Copies of the petition shall be served by registered or certified mail upon the agency, and all other
26 parties of record in the agency proceeding.

27 “(3)(a) The filing of the petition shall not stay enforcement of the agency order, but the agency
28 may do so upon a showing of:

29 “(A) Irreparable injury to the petitioner; and

30 “(B) A colorable claim of error in the order.

31 “(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the
32 agency shall grant the stay unless the agency determines that substantial public harm will result if
33 the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically
34 state the substantial public harm that would result from the granting of the stay.

35 “(c) When the agency grants a stay, the agency may impose such reasonable conditions as the

1 giving of a bond, irrevocable letter of credit or other undertaking and that the petitioner file all
2 documents necessary to bring the matter to issue before the Court of Appeals within specified rea-
3 sonable periods of time.

4 “(d) Agency denial of a motion for stay is subject to review by the Court of Appeals under such
5 rules as the court may establish.

6 “(4) Within 30 days after service of the petition, or within such further time as the court may
7 allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire
8 record of the proceeding under review, but, by stipulation of all parties to the review proceeding,
9 the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may
10 be taxed by the court for the additional costs. The court may require or permit subsequent cor-
11 rections or additions to the record when deemed desirable. Except as specifically provided in this
12 subsection, the cost of the record shall not be taxed to the petitioner or any intervening party.
13 However, the court may tax such costs and the cost of agency transcription of record to a party
14 filing a frivolous petition for review.

15 “(5) If, on review of a contested case, before the date set for hearing, application is made to the
16 court for leave to present additional evidence, and it is shown to the satisfaction of the court that
17 the additional evidence is material and that there were good and substantial reasons for failure to
18 present it in the proceeding before the agency, the court may order that the additional evidence be
19 taken before the agency upon such conditions as the court deems proper. The agency may modify
20 its findings and order by reason of the additional evidence and shall, within a time to be fixed by
21 the court, file with the reviewing court, to become a part of the record, the additional evidence,
22 together with any modifications or new findings or orders, or its certificate that the agency elects
23 to stand on its original findings and order, as the case may be.

24 “(6) At any time subsequent to the filing of the petition for review and prior to the date set for
25 hearing the agency may withdraw its order for purposes of reconsideration. If an agency withdraws
26 an order for purposes of reconsideration, the agency shall, within such time as the court may allow,
27 affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after
28 withdrawal for purposes of reconsideration, the petitioner may refile the petition for review and the
29 review shall proceed upon the revised order. An amended petition for review shall not be required
30 if the agency, on reconsideration, affirms the order or modifies the order with only minor changes.
31 If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order
32 in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid
33 from funds available to the agency.

34 “(7) Review of a contested case shall be confined to the record, and the court shall not substi-
35 tute its judgment for that of the agency as to any issue of fact or agency discretion. In the case of
36 disputed allegations of irregularities in procedure before the agency not shown in the record which,
37 if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a
38 master appointed by the court to take evidence and make findings of fact upon them. The court shall
39 remand the order for further agency action if the court finds that either the fairness of the pro-
40 ceedings or the correctness of the action may have been impaired by a material error in procedure
41 or a failure to follow prescribed procedure, including a failure by the presiding officer to comply
42 with the requirements of [ORS 183.415 (10)] **section 4 (8), chapter 288, Oregon Laws 2007 (En-**
43 **rolled House Bill 2423).**

44 “(8)(a) The court may affirm, reverse or remand the order. If the court finds that the agency
45 has erroneously interpreted a provision of law and that a correct interpretation compels a particular

1 action, the court shall:

2 “(A) Set aside or modify the order; or

3 “(B) Remand the case to the agency for further action under a correct interpretation of the
4 provision of law.

5 “(b) The court shall remand the order to the agency if the court finds the agency’s exercise of
6 discretion to be:

7 “(A) Outside the range of discretion delegated to the agency by law;

8 “(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency
9 practice, if the inconsistency is not explained by the agency; or

10 “(C) Otherwise in violation of a constitutional or statutory provision.

11 “(c) The court shall set aside or remand the order if the court finds that the order is not sup-
12 ported by substantial evidence in the record. Substantial evidence exists to support a finding of fact
13 when the record, viewed as a whole, would permit a reasonable person to make that finding.

14 “**SECTION 6.** If House Bill 2423 becomes law, ORS 183.615, as amended by section 3 of this 2007
15 Act, is amended to read:

16 “183.615. (1) An administrative law judge employed by or contracting with the chief adminis-
17 trative law judge shall conduct hearings on behalf of agencies as assigned by the chief administra-
18 tive law judge. An administrative law judge shall be impartial in the performance of the
19 administrative law judge’s duties and shall remain fair in all hearings conducted by the administra-
20 tive law judge. An administrative law judge shall develop the record in contested case proceedings
21 in the manner provided by [*ORS 183.415 (10)*] **section 4 (8), chapter 288, Oregon Laws 2007 (En-**
22 **rolled House Bill 2423).**

23 “(2) Only persons who have a knowledge of administrative law and procedure may be employed
24 by the chief administrative law judge as administrative law judges. The chief administrative law
25 judge by rule may establish additional qualifications for administrative law judges employed for the
26 office.”.

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