

REVENUE: No revenue impact
FISCAL: Fiscal statement issued

Action:	Do Pass as Amended, Be Printed Engrossed, and Be Placed on the Consent Calendar
Vote:	10 - 0 - 0
Yeas:	Barton, Cameron, Garrett, Krieger, Olson, Shields, Smith J., Stiegler, Whisnant, Barker
Nays:	0
Exc.:	0
Prepared By:	Bill Taylor, Counsel
Meeting Dates:	2/18, 3/13, 3/26

WHAT THE MEASURE DOES: Allows the Department of Human Services (DHS) in a contested case hearing to give notice by regular mail. States that the presumption that a letter properly mailed is presumed to be received does not apply. Establishes that if DHS issues notice in a contested case, the notice automatically becomes a final order against a party if: (1) The party fails to request a hearing in the time allowed; (2) DHS or the Office of Administrative Hearings issues an order dismissing the hearing request because the other party withdrew the request for a hearing or the party did not appear at the hearing. Requires the DHS to prescribe by rule a process that will allow a party to request a hearing concerning whether the party received the mailed notice. Requires DHS to inform a party claiming lack of mailed notice the right to request a hearing concerning receipt of notice.

ISSUES DISCUSSED:

- Need for notice
- Fiscal impact for actual service versus service by mail

EFFECT OF COMMITTEE AMENDMENT: Replaces the bill.

BACKGROUND: "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, 183.417, 183.425, 183.450, 183.460, 183.470.

"Contested case" does not include proceedings in which an agency decision rests solely on the result of a test. ORS 183.310 (2) "Final order" means final agency action expressed in writing. "Final order" does not include any tentative or preliminary agency declaration or statement that precedes final agency action; or does not preclude further agency consideration of the subject matter of the statement or declaration, ORS 183(6)(b).

Currently, DHS, and all agencies subject to the Administrative Procedures Act, are required to give notice in a contested case by serving the other party in person or by registered or certified mail, ORS 183.415. However, DHS currently serves by regular mail. This bill would codify current practice.

4/3/2009 3:43:00 PM

This summary has not been adopted or officially endorsed by action of the committee.