

Senate Bill 274

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

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**.

Requires that in hearing conducted by administrative law judge assigned from Office of Administrative Hearings, administrative law judge must issue final order on behalf of agency. Provides procedure for judicial review of final orders issued by administrative law judge assigned from office. Allows agency to appeal final order.

Provides that party may request change of administrative law judge assigned from office upon showing of good cause.

Requires administrative law judge assigned from office to disclose ex parte communications made by any agency. Eliminates exemption for duty of disclosure for certain communications from assistant attorney generals.

Requires that training for administrative law judge assigned from office not be provided by agency when administrative law judge is conducting hearing on behalf of agency and when training relates to matters to be decided in proceeding.

A BILL FOR AN ACT

Relating to administrative law judges; creating new provisions; and amending ORS 25.768, 183.310, 183.411, 183.480, 183.486, 183.625, 183.645, 183.650, 183.680, 183.685, 196.825, 196.835, 196.860, 293.316, 339.430, 358.495, 390.659, 390.663, 421.647, 421.653, 448.255, 466.185, 466.305, 468.110, 471.331, 506.462, 517.983, 527.700, 536.075, 543A.130, 657.683, 679.160, 701.149, 703.230, 737.209, 813.410, 813.450 and 813.460.

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

ISSUANCE OF FINAL ORDER BY ADMINISTRATIVE LAW JUDGES

SECTION 1. ORS 183.650 is amended to read:

183.650. (1) In any *[contested case]* hearing conducted by an administrative law judge assigned from the Office of Administrative Hearings, the administrative law judge shall prepare and serve on the agency and all parties to the hearing a *[form of]* **proposed** order, including *[recommended]* findings of fact and conclusions of law. *[The administrative law judge shall also prepare and serve a proposed order in the manner provided by ORS 183.464 unless the agency or hearing is exempt from the requirements of ORS 183.464.]* **The administrative law judge shall thereafter issue a final order on behalf of the agency, and mail copies of the final order to the agency and all parties in the proceeding. A final order issued under this section may be appealed in the manner provided by section 7 of this 2009 Act.**

[(2) If the administrative law judge assigned from the office will not enter the final order in a contested case proceeding, and the agency modifies the form of order issued by the administrative law judge in any substantial manner, the agency must identify the modifications and provide an explanation

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 *to the parties to the hearing as to why the agency made the modifications.]*

2 *[(3) An agency conducting a contested case hearing may modify a finding of historical fact made*
 3 *by the administrative law judge assigned from the Office of Administrative Hearings only if the agency*
 4 *determines that the finding of historical fact made by the administrative law judge is not supported by*
 5 *a preponderance of the evidence in the record. For the purposes of this section, an administrative law*
 6 *judge makes a finding of historical fact if the administrative law judge determines that an event did*
 7 *or did not occur in the past or that a circumstance or status did or did not exist either before the*
 8 *hearing or at the time of the hearing.]*

9 *[(4) If a party seeks judicial review of an agency's modification of a finding of historical fact under*
 10 *subsection (3) of this section, the court shall make an independent finding of the fact in dispute by*
 11 *conducting a review de novo of the record viewed as a whole. If the court decides that the agency erred*
 12 *in modifying the finding of historical fact made by the administrative law judge, the court shall remand*
 13 *the matter to the agency for entry of an order consistent with the court's judgment.]*

14 **(2) Notwithstanding any other provision of law, a petition for reconsideration or rehear-**
 15 **ing may not be filed with an agency in any proceeding conducted by administrative law judges**
 16 **assigned from the Office of Administrative Hearings.**

17 **(3) If the administrative law judge finds that the agency has erroneously interpreted a**
 18 **provision of law and that a correct interpretation compels a particular action, the judge**
 19 **shall:**

20 **(a) Set aside or modify the order; or**

21 **(b) Remand the case to the agency for further action under a correct interpretation of**
 22 **the provision of law.**

23 **(4) The administrative law judge shall remand the order to the agency if the judge finds**
 24 **the agency's exercise of discretion to be:**

25 **(a) Outside the range of discretion delegated to the agency by law;**

26 **(b) Inconsistent with an agency rule, an officially stated agency position, or a prior**
 27 **agency practice, and the inconsistency is not explained by the agency; or**

28 **(c) Otherwise in violation of a constitutional or statutory provision.**

29 **(5) The administrative law judge shall set aside or remand the order if the judge finds**
 30 **that the order is not supported by substantial evidence in the record. For the purposes of**
 31 **this subsection, substantial evidence exists to support a finding of fact when the record,**
 32 **viewed as a whole, would permit a reasonable person to make the finding.**

33 **SECTION 2.** ORS 183.310 is amended to read:

34 183.310. As used in this chapter:

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

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

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

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

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

45 (D) Where the agency by rule or order provides for hearings substantially of the character re-

1 quired by ORS 183.415, 183.417, 183.425, 183.450, 183.460 and 183.470.

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

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

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

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

11 (6)(a) "Order" means any agency action expressed orally or in writing directed to a named per-
12 son or named persons, other than employees, officers or members of an agency. "Order" includes
13 any [agency] determination or decision issued in connection with a contested case proceeding **if the**
14 **agency is not required to use administrative law judges assigned from the Office of Admin-**
15 **istrative Hearings.** "Order" includes:

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

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

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

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

23 (A) Precedes final agency action; or

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

26 (7) "Party" means:

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

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

29 (c) Any person requesting to participate before the agency as a party or in a limited party status
30 [which] **that** the agency determines either has an interest in the outcome of the agency's proceeding
31 or represents a public interest in such result. [*The agency's determination is subject to judicial review*
32 *in the manner provided by ORS 183.482 after the agency has issued its final order in the*
33 *proceedings.*]

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

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

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

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

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

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

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

2 (d) Intra-agency memoranda.

3 (e) Executive orders of the Governor.

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

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

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

8 (C) Disciplinary procedures adopted pursuant to ORS 421.180.

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

12 **SECTION 3.** ORS 183.411 is amended to read:

13 183.411. Unless otherwise provided by law, an agency **that is not required to use adminis-**
14 **trative law judges assigned from the Office of Administrative Hearings** may delegate authority
15 to enter a final order in a proceeding or class of proceedings to an officer or employee of the
16 agency, or to a class of officers or employees of the agency. A delegation of authority under this
17 section must be made in writing before the issuance of any order pursuant to the delegation and
18 must be retained in the agency's records.

19 **SECTION 4.** ORS 183.625 is amended to read:

20 183.625. (1) In assigning an administrative law judge to conduct hearings on behalf of an agency,
21 the chief administrative law judge shall, whenever practicable, assign an administrative law judge
22 that has expertise in the legal issues or general subject matter of the proceeding.

23 (2) Notwithstanding any other provision of state law, any agency that is required to use ad-
24 ministrative law judges assigned from the Office of Administrative Hearings to conduct hearings
25 must delegate responsibility for the conduct of the hearing to an administrative law judge assigned
26 from the Office of Administrative Hearings, and the hearing may not be conducted by the adminis-
27 trator, director, board, commission or other person or body charged with administering the agency.

28 *[(3) Any agency may authorize an administrative law judge assigned to conduct a hearing on be-*
29 *half of the agency under this section to enter a final order for the agency.]*

30 *[(4)]* (3) An agency that is not required to use administrative law judges assigned from the office
31 may contract with the chief administrative law judge for the assignment of an administrative law
32 judge from the office for the purpose of conducting one or more contested cases on behalf of the
33 agency.

34 **SECTION 5.** ORS 813.450 is amended to read:

35 813.450. (1) The petition to the circuit court appealing an order of the Department of Trans-
36 portation after a hearing under ORS 813.410 shall state the nature of the petitioner's interest and
37 the ground or grounds upon which the petitioner contends the order should be reversed or re-
38 manded.

39 (2) The court shall conduct the review without a jury. Review shall be limited to the record of
40 the department's hearing.

41 (3) **The department or** any party to the proceedings before the circuit court may appeal from
42 the judgment of the court to the Court of Appeals.

43 (4) Upon review in the circuit court and Court of Appeals, the court may affirm, reverse or re-
44 mand the order as follows:

45 (a) If the court finds that the *[department]* **administrative law judge** has erroneously inter-

1 preted a provision of law and that a correct interpretation compels a particular action, [it] **the**
 2 **court** shall:

3 (A) Set aside or modify the order; or

4 (B) Remand the case to the [department] **administrative law judge** for further action under a
 5 correct interpretation of the provision of law.

6 (b) The court shall remand the order to the department if it finds the department’s exercise of
 7 discretion to be any of the following:

8 (A) Outside the range of discretion delegated to the agency by law.

9 (B) Inconsistent with a department rule, an officially stated department position, or a prior de-
 10 partment practice, if the inconsistency is not explained by the department.

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

12 (c) The court shall set aside or remand the order if it finds that the order is not supported by
 13 substantial evidence in the record.

14 (5) Upon review, the court shall affirm the [department’s] order unless the court finds a ground
 15 for setting aside, modifying or remanding [to the department] under a specified provision of this
 16 section.

17 [(6) In any review under this section, the court shall also review de novo determinations made by
 18 an agency that are subject to ORS 183.650 (4).]

19
 20 **JUDICIAL REVIEW OF FINAL ORDERS**
 21 **ISSUED BY ADMINISTRATIVE LAW JUDGES**

22
 23 **SECTION 6.** Section 7 of this 2009 Act is added to and made a part of ORS 183.480 to
 24 **183.484.**

25 **SECTION 7.** (1) **Jurisdiction for judicial review of final orders issued on behalf of agencies**
 26 **by administrative law judges assigned from the Office of Administrative Hearings is con-**
 27 **ferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a peti-**
 28 **tion in the Court of Appeals. Unless otherwise provided by law, the petition must be filed**
 29 **within 60 days after the date on which the agency delivered or mailed its order in accordance**
 30 **with ORS 183.470.**

31 (2) **Agencies may seek judicial review of final orders issued by administrative law judges**
 32 **assigned from the Office of Administrative Hearings.**

33 (3) **A petition for review filed under this section must state the nature of the final order**
 34 **to be reviewed and whether the petitioner is:**

35 (a) **The agency;**

36 (b) **A party to the administrative proceeding;**

37 (c) **A person who was denied status as a party to the administrative proceeding; or**

38 (d) **A person who is otherwise adversely affected or aggrieved by the final order.**

39 (4) **If a petitioner claims standing under subsection (3)(d) of this section, the petitioner**
 40 **must attach to the petition an affidavit that states facts showing how the petitioner is ad-**
 41 **versely affected or aggrieved by the final order. The Court of Appeals shall decide whether**
 42 **or not the petitioner is entitled to standing under subsection (3)(d) of this section before**
 43 **considering the merits of the petition.**

44 (5) **If the petitioner is the agency, the agency must serve copies of the petition by regis-**
 45 **tered or certified mail on all other parties of record in the proceeding. If the petitioner is**

1 not the agency, the petitioner must serve copies of the petition by registered or certified
2 mail on the agency and all other parties of record in the proceeding.

3 (6)(a) The filing of the petition for review under this section does not stay enforcement
4 of the final order, but the administrative law judge may stay enforcement of the final order
5 upon a showing of:

6 (A) Irreparable injury to the petitioner; and

7 (B) A colorable claim of error in the final order.

8 (b) If a petitioner makes the showing required by paragraph (a) of this subsection, the
9 administrative law judge shall grant the stay unless the judge determines that substantial
10 public harm will result if the final order is stayed. If the administrative law judge denies the
11 stay, the denial shall be in writing and shall specifically state the substantial public harm
12 that would result from the granting of the stay.

13 (c) If an administrative law judge grants a stay, the judge may impose such reasonable
14 conditions as the giving of a bond, irrevocable letter of credit or other undertaking and the
15 filing by the petitioner of all documents necessary to bring the matter to issue before the
16 Court of Appeals within a specified period of time.

17 (d) Denial of a motion for stay under this subsection is subject to review by the Court
18 of Appeals under such rules as the court may establish.

19 (7) Within 30 days after service of the petition under this section, or within such further
20 time as the court may allow, the administrative law judge shall transmit to the reviewing
21 court the original or a certified copy of the entire record of the proceeding under review, or
22 of such limited record as may be agreed to by all parties to the appeal. The court may re-
23 quire or permit subsequent corrections or additions to the record. The cost of the record
24 shall not be taxed to the parties to the appeal, except:

25 (a) Any party to the appeal unreasonably refusing to stipulate to limit the record may
26 be taxed for the additional cost of preparing copies of the entire record; and

27 (b) The cost of the record may be taxed to a petitioner that files a frivolous petition for
28 review.

29 (8) If before the date set for hearing a party makes a motion requesting permission to
30 present additional evidence, and the moving party shows to the satisfaction of the court that
31 the additional evidence is material and that there were good and substantial reasons for
32 failure to present it in the proceeding before the administrative law judge, the court may
33 order that the additional evidence be taken before the administrative law judge under such
34 conditions as the court deems proper. The administrative law judge may modify the findings
35 and final order by reason of the additional evidence and shall, within a time to be fixed by
36 the court, file the additional evidence with the reviewing court.

37 (9) The court shall confine review of a final order under this section to the record. If
38 there is an allegation of an irregularity in the procedure before the administrative law judge
39 that is not shown in the record, the court may refer the allegations to a master appointed
40 by the court to take evidence and make findings of fact. The court shall remand the final
41 order for further consideration by the administrative law judge if the court finds that the
42 fairness of the proceedings may have been impaired by either a material error in procedure
43 or a failure to follow prescribed procedure, including a failure by the administrative law judge
44 to comply with the requirements of ORS 183.417 (8).

45 (10) The court may affirm, reverse or remand a final order under this section.

SECTION 8. ORS 25.768 is amended to read:

25.768. The order of the administrative law judge is final and is subject to judicial review as provided in [ORS 183.482] **section 7 of this 2009 Act**. Any suspension under ORS 25.750 to 25.783 is not stayed pending judicial review.

SECTION 9. ORS 183.480 is amended to read:

183.480. (1) Except as provided in ORS 183.417 (3)(b), 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 **section 7 of this 2009 Act and** ORS 183.482, 183.484, 183.490 and 183.500. **A final order issued by an administrative law judge on behalf of an agency under ORS 183.650 may be appealed only in the manner provided by section 7 of this 2009 Act.**

(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, **section 7 of this 2009 Act** 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 10. ORS 183.486 is amended to read:

183.486. (1) The reviewing court's decision under **section 7 of this 2009 Act or** ORS 183.482 or 183.484 may be mandatory, prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

(a) Order agency action required by law, order agency exercise of discretion when required by law, set aside agency action, remand the case for further agency proceedings or decide the rights, privileges, obligations, requirements or procedures at issue between the parties; and

(b) Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(2) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(3) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency action.

SECTION 11. ORS 196.825 is amended to read:

196.825. (1) The Director of the Department of State Lands shall issue a permit applied for under ORS 196.815 if the director determines that the project described in the application:

(a) Is consistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.905; and

(b) Would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation.

(2) In determining whether to issue a permit, the director shall consider all of the following:

(a) The public need for the proposed fill or removal and the social, economic or other public benefits likely to result from the proposed fill or removal. When the applicant for a permit is a public body, the director may accept and rely upon the public body's findings as to local public need

1 and local public benefit.

2 (b) The economic cost to the public if the proposed fill or removal is not accomplished.

3 (c) The availability of alternatives to the project for which the fill or removal is proposed.

4 (d) The availability of alternative sites for the proposed fill or removal.

5 (e) Whether the proposed fill or removal conforms to sound policies of conservation and would
6 not interfere with public health and safety.

7 (f) Whether the proposed fill or removal is in conformance with existing public uses of the wa-
8 ters and with uses designated for adjacent land in an acknowledged comprehensive plan and land
9 use regulations.

10 (g) Whether the proposed fill or removal is compatible with the acknowledged comprehensive
11 plan and land use regulations for the area where the proposed fill or removal is to take place or
12 can be conditioned on a future local approval to meet this criterion.

13 (h) Whether the proposed fill or removal is for streambank protection.

14 (i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects
15 of the proposed fill or removal in the manner set forth in ORS 196.800. If off-site compensatory
16 wetland mitigation is proposed, the applicant shall document the impracticability of on-site
17 compensatory wetland mitigation.

18 (3) The director may issue a permit for a project that results in a substantial fill in an estuary
19 for a nonwater dependent use only if the project is for a public use and would satisfy a public need
20 that outweighs harm to navigation, fishery and recreation and if the proposed fill meets all other
21 criteria contained in ORS 196.600 to 196.905.

22 (4) If the director issues a permit, the director may impose such conditions as the director con-
23 siders necessary to carry out the purposes of ORS 196.805 and 196.830 and subsection (1) of this
24 section and to provide mitigation for the reasonably expected adverse effects of project development.
25 In formulating such conditions the director may request comment from public bodies, as defined in
26 ORS 174.109, federal agencies and tribal governments affected by the permit. Each permit is valid
27 only for the time specified therein. The director shall impose, as conditions to any permit, general
28 authorization or wetland conservation plan, measures to provide mitigation for the reasonably ex-
29 pected adverse effects of project development. Compensatory wetland mitigation shall be limited to
30 replacement of the functional attributes of the lost wetland.

31 (5) The director may request comment from interested parties and adjacent property owners on
32 any application for a permit. The director shall furnish to any person, upon written request and at
33 the expense of the person who requests the copy, a copy of any application for a permit or author-
34 ization under this section or ORS 196.850.

35 (6) Any applicant whose application for a permit or authorization has been deemed incomplete
36 or has been denied, or who objects to any of the conditions imposed under this section by the di-
37 rector, may, within 21 days of the denial of the permit or authorization or the imposition of any
38 condition, request a hearing from the director. Thereupon the director shall set the matter down for
39 hearing, which shall be conducted as a contested case in accordance with ORS 183.415 to 183.430,
40 183.440 to 183.460 and 183.470. *[After such hearing, the director shall enter an order containing*
41 *findings of fact and conclusions of law. The order shall rescind, affirm or modify the director's initial*
42 *order.]* Appeals from the [*director's*] final order may be taken to the Court of Appeals in the manner
43 provided by [*ORS 183.482*] **section 7 of this 2009 Act.**

44 (7) Except for a permit issued under the process set forth in ORS 517.952 to 517.989, the director
45 shall:

1 (a) Determine whether an application is complete within 30 days from the date the Department
2 of State Lands receives the application. If the director determines that an application is complete,
3 the director shall distribute the application for comment pursuant to subsection (4) of this section.
4 If the director determines that the application is not complete, the director shall notify the applicant
5 in writing that the application is deficient and explain, in the same notice, the deficiencies.

6 (b) Issue a permit decision within 90 days after the date the director determines that the appli-
7 cation is complete unless:

8 (A) An extension of time is granted under subsection (9)(b) of this section; or

9 (B) The applicant and the director agree to a longer time period.

10 (8) Permits issued under this section shall be in lieu of any permit or authorization that might
11 be required for the same operation under ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055,
12 468.060, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085, so long as:

13 (a) The operation is that for which the permit or authorization is issued; and

14 (b) The standards for granting the permit or authorization are substantially the same as those
15 established pursuant to ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055, 468.110, 468.120,
16 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

17 (9)(a) Any public body, as defined in ORS 174.109, federal agency or tribal government requested
18 by the director to comment on an application for a permit must submit its comments to the director
19 not more than 30 days after receiving the request for comment. If a public body, federal agency or
20 tribal government fails to comment on the application within 30 days, the director shall assume that
21 the public body, federal agency or tribal government has no objection.

22 (b) The Department of Environmental Quality shall provide comments to the director within 75
23 days after receiving notice under subsection (4) of this section if the permit action requires certif-
24 ication under the Federal Water Pollution Control Act (P.L. 92-500), as amended.

25 (10) In determining whether to issue a permit, the director may consider only standards and
26 criteria in effect on the date the director receives the completed application.

27 (11) As used in this section:

28 (a) "Applicant" means a landowner or person authorized by a landowner to conduct a removal
29 or fill activity.

30 (b) "Completed application" means a signed permit application form that contains all necessary
31 information for the director to determine whether to issue a permit, including:

32 (A) A map showing the project site with sufficient accuracy to easily locate the removal or fill
33 site;

34 (B) A project plan showing the project site and proposed alterations;

35 (C) The fee required under ORS 196.815;

36 (D) Any changes that may be made to the hydraulic characteristics of waters of this state and
37 a plan to minimize or avoid any adverse effects of those changes;

38 (E) If the project may cause substantial adverse effects on aquatic life or aquatic habitat within
39 this state, documentation of existing conditions and resources and identification of the potential
40 impact if the project is completed;

41 (F) An analysis of alternatives that evaluates practicable methods to minimize and avoid impacts
42 to waters of this state;

43 (G) If the project is to fill or remove material from wetlands, a wetlands mitigation plan; and

44 (H) Any other information that the director deems pertinent and necessary to make an informed
45 decision on whether the application complies with the policy and standards set forth in this section.

1 **SECTION 12.** ORS 196.835 is amended to read:

2 196.835. Any person aggrieved or adversely affected by the grant of a permit by the Director
 3 of the Department of State Lands may file a written request for hearing with the director within
 4 21 days after the date the permit was granted. If the director finds that the person making the
 5 written request has a legally protected interest which is adversely affected by the grant of the
 6 permit, the director shall set the matter down for hearing within 30 days after receipt of the request.
 7 The hearing shall be conducted as a contested case in accordance with ORS 183.415 to 183.430,
 8 183.440 to 183.460 and 183.470. The permittee shall be a party to the proceeding. Within 45 days of
 9 the hearing the [*director*] **administrative law judge** shall enter [*an*] **a final** order [*containing*
 10 *findings of fact and conclusions of law. The order shall rescind, affirm or modify the director's original*
 11 *order*]. Appeals from the [*director's*] final order may be taken to the Court of Appeals in the manner
 12 provided by [*ORS 183.482*] **section 7 of this 2009 Act**. A permit to fill granted by the director may
 13 be suspended by the director during the pendency of the proceedings before the director and any
 14 appeal. The director shall not suspend the permit unless the person aggrieved or adversely affected
 15 by grant of permit makes a showing before the director by clear and convincing evidence that
 16 commencement or continuation of the fill would cause irreparable damage and would be incon-
 17 sistent with ORS 196.600 to 196.905.

18 **SECTION 13.** ORS 196.860 is amended to read:

19 196.860. (1) If the Director of the Department of State Lands determines that material is being
 20 removed from or filling is occurring in any of the waters of this state without a permit issued under
 21 ORS 196.825, or in a manner contrary to the conditions set out in the permit, or in a manner con-
 22 trary to the conditions set out in an order approving a wetland conservation plan, the director may:

23 (a) Investigate, hold hearings, make orders and take action, as provided in ORS 196.600 to
 24 196.905, as soon as possible.

25 (b) For the purpose of investigating conditions relating to the removal or filling, through the
 26 employees or the duly authorized representatives of the Department of State Lands, enter at rea-
 27 sonable times upon any private or public property.

28 (c) Conduct public hearings in accordance with ORS chapter 183.

29 (d) Publish findings and recommendations as they are developed relative to public policies and
 30 procedures necessary for the correction of conditions or violations of ORS 196.600 to 196.905.

31 (e) Give notice of any proposed order relating to a violation by personal service or by mailing
 32 the notice by registered or certified mail to the person affected. Any person aggrieved by a proposed
 33 order of the director may request a hearing within 20 days of the date of personal service or mailing
 34 of the notice. Hearings shall be conducted under the provisions of ORS chapter 183 applicable to
 35 contested cases, and judicial review of final orders shall be conducted in the Court of Appeals ac-
 36 cording to [*ORS 183.482*] **section 7 of this 2009 Act**. If no hearing is requested or if the party fails
 37 to appear, a final order shall be issued upon a prima facie case on the record of the agency.

38 (f) Take appropriate action for the enforcement of any rules or final orders. Any violation of
 39 ORS 196.600 to 196.905 or of any rule or final order of the director under ORS 196.600 to 196.905
 40 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon. In any
 41 such proceedings the director may seek and the court may award a sum of money sufficient to
 42 compensate the public for any destruction or infringement of any public right of navigation, fishery
 43 or recreation resulting from the violation. Proceedings thus brought by the director shall set forth
 44 if applicable the dates of notice and hearing and the specific rule or order of the director, together
 45 with the facts of noncompliance, the facts giving rise to the public nuisance, and a statement of the

1 damages to any public right of navigation, fishery or recreation, if any, resulting from the violation.

2 (2)(a) In addition to the administrative action the director may take under subsection (1) of this
3 section, the director may enter an order requiring any person to cease and desist from any violation
4 if the director determines that the violation presents an imminent and substantial risk of injury, loss
5 or damage to water resources.

6 (b) An order under this subsection:

7 (A) May be entered without prior notice or hearing.

8 (B) Shall be served upon the person by personal service or by registered or certified mail.

9 (C) Shall state that a hearing will be held on the order if a written request for hearing is filed
10 by the person subject to the order within 10 days after receipt of the order.

11 (D) May not be stayed during the pendency of a hearing conducted under paragraph (c) of this
12 subsection.

13 (c) If a person subject to an order under this subsection files a timely demand for hearing, the
14 director shall hold a contested case hearing according to the applicable provisions of ORS chapter
15 183. If the person fails to request a hearing, the order shall be entered as a final order upon prima
16 facie case made on the record of the agency.

17 (d) Neither the director nor any duly authorized representative of the department shall be liable
18 for any damages a person may sustain as a result of a cease and desist order issued under this
19 subsection.

20 (e) The state and local police shall cooperate in the enforcement of any order issued under this
21 subsection and shall require no further authority or warrant in executing or enforcing the order. If
22 any person fails to comply with an order issued under this subsection, the circuit court of the county
23 in which the violation occurred or is threatened shall compel compliance with the director's order
24 in the same manner as with an order of that court.

25 (3) As used in this section, "violation" means removing material from or placing fill in any of
26 the waters of this state without a permit or in a manner contrary to the conditions set out in a
27 permit issued under ORS 196.825.

28 **SECTION 14.** ORS 293.316 is amended to read:

29 293.316. Any person aggrieved by the disallowance of a claim for payment of any moneys in the
30 State Treasury, if the claim is subject to disapproval by the Oregon Department of Administrative
31 Services under ORS 293.300, or by the state agency that incurred the obligation or made the ex-
32 penditure on which the claim is based, if the claim is not subject to disapproval by the department
33 under ORS 293.300, may appeal the disallowance by the department or agency under *[ORS 183.482]*
34 **section 7 of this 2009 Act.**

35 **SECTION 15.** ORS 339.430 is amended to read:

36 339.430. (1) Voluntary organizations that desire to administer interscholastic activities shall ap-
37 ply to the State Board of Education for approval.

38 (2) The board shall review the rules and bylaws of the voluntary organization to determine that
39 the rules and bylaws do not conflict with state law or rules of the board.

40 (3) A voluntary organization must submit to the board for review any rules, or changes in rules,
41 that specify the criteria for the placement of a school into an interscholastic activity district. A
42 voluntary organization may not establish or change an interscholastic activity district until the
43 board has approved the rules of the voluntary organization.

44 (4) If a voluntary organization meets the standards established under ORS 326.051 and its rules
45 and bylaws do not conflict with state law or rules of the board, the board shall approve the organ-

1 ization. An approved voluntary organization is qualified to administer interscholastic activities.

2 (5) The board may suspend or revoke its approval if an approved organization is found to have
3 violated state law, rules of the board or subsection (3) of this section. If a voluntary organization
4 is not approved or its approval is suspended or revoked, it may appeal the denial, suspension or
5 revocation as a contested case under ORS chapter 183.

6 (6) A voluntary organization's decisions concerning interscholastic activities may be appealed
7 to the board[, *which may hear the matter or by rule may delegate authority to a hearing officer to hold*
8 *a hearing and enter a final order under ORS chapter 183. Such decisions*] **for a contested case**
9 **hearing under ORS chapter 183. The final order** may be appealed under [ORS 183.482] **section**
10 **7 of this 2009 Act.**

11 **SECTION 16.** ORS 358.495 is amended to read:

12 358.495. (1) Immediately following approval or disapproval of an application under ORS 358.490,
13 the State Historic Preservation Officer shall notify the county assessor, the governing body and the
14 applicant which shall in no event be later than September 15 of the tax year for which classification
15 and special assessment are first desired. In no event later than September 15 of the year for which
16 classification and special assessment are desired, the State Historic Preservation Officer shall cause
17 a copy of the preservation plan approved under ORS 358.490 to be delivered or mailed to the county
18 assessor and the governing body. An application not denied on or before September 15 shall be
19 deemed approved, and the property that is the subject of the application shall be considered to be
20 historic property that qualifies under ORS 358.480 to 358.545.

21 (2) If the State Historic Preservation Officer determines that the historic property qualifies un-
22 der ORS 358.480 to 358.545, the State Historic Preservation Officer shall certify that fact in writing
23 and shall file a copy of the certificate with the county assessor and the governing body. The cer-
24 tificate shall state the facts upon which the approval was based and list any condition on which
25 approval is based. The county assessor, as to any historic property, shall assess on the basis pro-
26 vided in ORS 358.505, and each year the historic property is classified and so assessed shall also
27 enter on the assessment and tax roll that the property is being specially assessed as historic prop-
28 erty and is subject to potential additional taxes as provided in ORS 358.525 by adding the notation
29 "historic property (potential additional tax)."

30 (3) If the State Historic Preservation Officer determines that the property does not qualify for
31 classification and assessment under ORS 358.480 to 358.545, the State Historic Preservation Officer
32 shall give written notice of the denial to the applicant. The notice shall state the reasons for the
33 denial.

34 (4)[(a)] Any owner, governing body or county assessor affected by a determination of the State
35 Historic Preservation Officer made under ORS 358.480 to 358.545 may request a contested case
36 hearing according to the provisions of ORS chapter 183.

37 [(b) *After a contested case hearing has been held, the administrative law judge shall present the*
38 *proposed order to the Historic Assessment Review Committee. The review committee shall determine the*
39 *final order in the case.*]

40 **SECTION 17.** ORS 390.659 is amended to read:

41 390.659. (1) Any applicant whose application for a permit under ORS 390.650 has been denied
42 or who objects to any condition imposed on the permit or any person aggrieved or adversely affected
43 by the granting of a permit may, within 30 days after the denial of the permit or the imposition of
44 the condition, request a hearing from the State Parks and Recreation Director.

45 (2) Upon receipt of a request for hearing from the applicant or if the director finds that the

1 person other than the applicant making the request has a legally protected interest that is adversely
 2 affected by the grant of the permit, the director shall set the matter down for hearing within 30 days
 3 after receipt of the request. The hearing shall be conducted as a contested case in accordance with
 4 ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. The applicant shall be a party to any con-
 5 tested case hearing requested by a person other than the applicant.

6 (3) Within 45 days after the hearing the [*director*] **administrative law judge** shall enter [*an*] **a**
 7 **final** order [*containing findings of fact and conclusions of law. The order shall rescind, affirm or*
 8 *modify the director's original order*]. Appeals from the [*director's*] final order may be taken to the
 9 Court of Appeals in the manner provided by [*ORS 183.482*] **section 7 of this 2009 Act.**

10 (4) A permit granted by the director may be suspended by the director during the pendency of
 11 the proceedings before the director and any appeal. The director shall not suspend the permit unless
 12 the person aggrieved or adversely affected by grant of permit makes a showing before the director
 13 by clear and convincing evidence that commencement or continuation of the improvement would
 14 cause irreparable damage and would be inconsistent with ORS 390.610, 390.620 to 390.676, 390.690
 15 and 390.705 to 390.770.

16 **SECTION 18.** ORS 390.663 is amended to read:

17 390.663. (1) If the State Parks and Recreation Director determines that any improvement is being
 18 made on property within the ocean shore without a permit issued under ORS 390.650, or in a manner
 19 contrary to the conditions set out in the permit, the director may:

20 (a) Investigate, hold hearings, make orders and take action, as provided in ORS 390.620 to
 21 390.676, as soon as possible.

22 (b) For the purpose of investigating conditions relating to such improvements, through the em-
 23 ployees or the duly authorized representatives of the State Parks and Recreation Department, enter
 24 at reasonable times upon any private or public property.

25 (c) Conduct public hearings in accordance with ORS chapter 183.

26 (d) Publish findings and recommendations as they are developed relative to public policies and
 27 procedures necessary for the correction of conditions or violations of ORS 390.620 to 390.676.

28 (e) Give notice of any proposed order relating to a violation by personal service or by mailing
 29 the notice by registered or certified mail to the person or governmental body affected. Any person
 30 aggrieved by a proposed order of the director may request a hearing within 20 days of the date of
 31 personal service or mailing of the notice. Hearings shall be conducted under the provisions of ORS
 32 chapter 183 applicable to contested cases, and judicial review of final orders shall be conducted in
 33 the Court of Appeals according to [*ORS 183.482*] **section 7 of this 2009 Act.** If no hearing is re-
 34 quested or if the party fails to appear, a final order shall be issued upon a prima facie case on the
 35 record of the department.

36 (f) Take appropriate action for the enforcement of any rules or final orders. Any violation of
 37 ORS 390.620 to 390.676 or of any rule or final order of the director under ORS 390.620 to 390.676
 38 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon. In any
 39 such proceedings, the director may seek and the court may award a sum of money sufficient to
 40 compensate the public for any destruction or infringement of any public right of navigation, fishery
 41 or recreation resulting from such violation. Proceedings brought by the director shall set forth, if
 42 applicable, the dates of notice and hearing and the specific rule or order of the director, together
 43 with the facts of noncompliance, the facts giving rise to the public nuisance and a statement of the
 44 damages to any public right of navigation, fishery or recreation, if any, resulting from such vio-
 45 lation.

1 (2) In addition to the administrative action the director may take under subsection (1) of this
 2 section, the director may enter an order requiring any person to cease and desist from any violation
 3 if the director determines that such violation presents an imminent and substantial risk of injury,
 4 loss or damage to the ocean shore.

5 (3) An order under subsection (2) of this section:

6 (a) May be entered without prior notice or hearing.

7 (b) Shall be served upon the person by personal service or by registered or certified mail.

8 (c) Shall state that a hearing will be held on the order if a written request for hearing is filed
 9 by the person subject to the order within 10 days after receipt of the order.

10 (d) Shall not be stayed during the pendency of a hearing conducted under subsection (4) of this
 11 section.

12 (4) If a person subject to an order under subsection (2) of this section files a timely demand for
 13 hearing, the director shall hold a contested case hearing according to the applicable provisions of
 14 ORS chapter 183. If the person fails to request a hearing, the order shall be entered as a final order
 15 upon prima facie case made on the record of the department.

16 (5) Neither the director nor any duly authorized representative of the department shall be liable
 17 for any damages a person may sustain as a result of a cease and desist order issued under sub-
 18 section (2) of this section.

19 (6) The state and local police shall cooperate in the enforcement of any order issued under
 20 subsection (2) of this section and shall require no further authority or warrant in executing or en-
 21 forcing such order. If any person fails to comply with an order issued under subsection (2) of this
 22 section, the circuit court of the county in which the violation occurred or is threatened shall compel
 23 compliance with the director's order in the same manner as with an order of that court.

24 (7) As used in this section, "violation" means making an improvement on property within the
 25 ocean shore without a permit or in a manner contrary to the conditions set out in a permit issued
 26 under ORS 390.650.

27 **SECTION 19.** ORS 421.647 is amended to read:

28 421.647. (1) Notwithstanding ORS 183.400, 183.482, 183.484 or 197.825, **section 7 of this 2009**
 29 **Act** or any other law, review of any decision or action relating to the issuance or denial of a permit,
 30 license or certificate under ORS 421.645 (1) to (7) is as described in this section.

31 (2) A person or governmental entity adversely affected by a decision or action may institute a
 32 proceeding for review by filing a petition in Marion County Circuit Court that meets the following
 33 requirements:

34 (a) The petition must be filed within 21 days of issuance of the specific decision or action on
 35 which the petition is based.

36 (b) The petition must include the following:

37 (A) A statement of the nature of the decision or action the petitioner desires to be reviewed.

38 (B) A statement of the constitutional, statutory or other legal provision providing a basis for the
 39 challenge.

40 (C) A statement of whether the validity of the decision or action depends on factual findings and
 41 whether it is necessary to create a record in order to review the challenge.

42 (D) A statement and supporting affidavit showing how the petitioner is adversely affected by the
 43 decision or action.

44 (c) The petitioner shall serve a copy of the petition by registered or certified mail upon the
 45 Department of Corrections and the Attorney General.

1 (3) The court may affirm, reverse or remand the decision or action. The court shall reverse or
 2 remand the decision or action if the court finds that the entity making the decision or taking the
 3 action:

4 (a) Exceeded its statutory or constitutional authority; or

5 (b) Made a decision or took an action, the validity of which depends on the existence of one or
 6 more facts, when the requisite fact or facts do not exist.

7 (4) As to any decision or action, the validity of which depends on the existence of a particular
 8 fact:

9 (a) The court shall first decide whether any claims of error require fact-finding because the
 10 challenged decision or action depends on the existence of one or more facts. If the court determines
 11 that the claim of error requires fact-finding, the court shall decide whether additional evidence is
 12 required in order to determine whether the necessary fact exists. To be considered by the court, the
 13 evidence, if required, need not have been before the decision maker at the time of making the de-
 14 cision or taking the action.

15 (b) In determining the existence of a necessary fact, the fact shall be deemed to exist if the court
 16 finds, based on the record presented to or made before it, that there is evidence, taken in isolation,
 17 from which a reasonable person could conclude that the fact exists.

18 (5) If the court determines that the claim of error may be resolved without taking additional
 19 evidence, the court shall certify the matter to the Supreme Court and the Supreme Court shall ac-
 20 cept the certification. The Supreme Court shall conduct its review as provided in subsections (3) and
 21 (4) of this section.

22 (6) Any party to the proceedings before the court may appeal from the judgment of that court
 23 to the Supreme Court by filing a petition meeting the criteria set forth in subsection (2) of this
 24 section. The petition must be filed within 21 days after the entry of the judgment. The Supreme
 25 Court shall conduct its review as provided in subsections (3) and (4) of this section.

26 **SECTION 20.** ORS 421.653 is amended to read:

27 421.653. (1) Except as provided in ORS 421.647 and notwithstanding ORS 183.400, 183.482,
 28 183.484 or 197.825, **section 7 of this 2009 Act** or any other law, exclusive jurisdiction for review
 29 of the constitutionality of ORS 421.635 to 421.651 and any decision relating to the siting of a wom-
 30 en's correctional facility and intake center complex under ORS 421.637, 421.641, 421.643, 421.645 (8),
 31 421.649 and 421.651 [*and section 8 (2), chapter 982, Oregon Laws 1999,*] is conferred upon the Supreme
 32 Court.

33 (2) A person or local government adversely affected by ORS 421.635 to 421.651 may institute a
 34 proceeding for review by filing with the Supreme Court a petition that meets the following require-
 35 ments:

36 (a) The petition for review of the constitutionality of ORS 421.635 to 421.657 [*and section 8 (2),*
 37 *chapter 982, Oregon Laws 1999,*] must be filed within 21 days after August 20, 1999. The petition
 38 must include the following:

39 (A) A statement of the constitutional provision providing a basis for the challenge.

40 (B) A statement and supporting affidavit showing how the petitioner is adversely affected.

41 (b) A petition for review of a decision made under ORS 421.637, 421.641, 421.643, 421.645 (8),
 42 421.649 and 421.651 [*and section 8 (2), chapter 982, Oregon Laws 1999,*] shall be filed within 21 days
 43 of issuance of the specific decision on which the petition is based.

44 (3) The petitioner shall serve a copy of the petition by registered or certified mail upon the
 45 Department of Corrections and the Attorney General.

1 (4) A petition filed under subsection (2)(b) of this section shall state the nature of the decision
 2 the petitioner desires reviewed and in what manner the decision below rejected the position raised
 3 by the petitioner.

4 (5) Within 30 days after service of the petition under subsection (2)(a) of this section, the de-
 5 partment shall transmit to the Supreme Court, or a special master it designates, the original or a
 6 certified copy of the entire record and any findings that may have been made. The court shall not
 7 substitute its judgment for that of the Governor or the Director of the Department of Corrections
 8 as to any issue of fact or issue within executive branch discretion.

9 (6) If the petition is filed under subsection (2)(b) of this section, the record shall include only:

10 (a) The director's final report prepared under ORS 421.641.

11 (b) The conditions, if any, on the proposed site.

12 (c) The transcript of the hearing before the department. However, on motion of the director,
 13 the Supreme Court may limit the transcript to those matters in which the petitioner is interested
 14 as provided in subsection (2)(b) of this section.

15 (d) Evidence submitted by the petitioner to the director, but on motion of any party to the ju-
 16 dicial review, the Supreme Court may supplement the record with additional materials from the
 17 hearing before the director.

18 (7) Upon review, the Supreme Court may reverse or remand a decision made under ORS 421.637,
 19 421.641, 421.643, 421.645 (8), 421.649 and 421.651 [*and section 8 (2), chapter 982, Oregon Laws 1999,*]
 20 if the Supreme Court finds the director, Department of Corrections or the Governor:

21 (a) Exceeded the statutory or constitutional authority of the decision maker; or

22 (b) Made a decision not supported by substantial evidence. For purposes of this subsection,
 23 "substantial evidence" means evidence that, taken in isolation, a reasonable mind could accept as
 24 adequate to support a conclusion. The substantiality of the evidence shall not be evaluated by con-
 25 sidering the whole record.

26 (8) Proceedings for review under this section shall be given priority over all other matters be-
 27 fore the Supreme Court.

28 **SECTION 21.** ORS 448.255 is amended to read:

29 448.255. (1) Whenever the Director of Human Services has reasonable grounds to believe that
 30 a water system or part thereof is being operated or maintained in violation of any rule adopted
 31 pursuant to ORS 448.115 to 448.285, 454.235 and 454.255, the director shall give written notice to the
 32 water supplier responsible for the system.

33 (2) The notice required under subsection (1) of this section shall include the following:

34 (a) Citation of the rule allegedly violated;

35 (b) The manner and extent of the alleged violation; and

36 (c) A statement of the party's right to request a hearing.

37 (3) The notice shall be served personally or by registered or certified mail and shall be accom-
 38 panied by an order of the director requiring remedial action which, if taken within the time specified
 39 in the order, will effect compliance with the rule allegedly violated. The order shall become final
 40 unless request for hearing is made by the party receiving the notice within 10 days from the date
 41 of personal service or the date of mailing of the notice.

42 (4) The form of petition for hearing and the procedures employed in the hearing shall be con-
 43 sistent with the requirements of ORS chapter 183 and shall be in accordance with rules adopted by
 44 the Department of Human Services.

45 (5) Hearings under this section shall be conducted by an administrative law judge assigned from

1 the Office of Administrative Hearings established under ORS 183.605.

2 [(6) *The order shall be affirmed or reversed by the director after hearing. A copy of the director's*
3 *decision setting forth findings of fact and conclusions shall be sent by registered or certified mail to*
4 *the petitioner or served personally upon the petitioner. An appeal from such decision may be made as*
5 *provided in ORS 183.480 relating to a contested case.*]

6 **SECTION 22.** ORS 466.185 is amended to read:

7 466.185. (1) The Department of Environmental Quality shall investigate any complaint made to
8 it by any person that the operation of any generator, air or water transporter or hazardous waste
9 disposal, storage or treatment site is unsafe or that the operation is in violation of the provisions
10 of ORS 466.005 to 466.385 and 466.992 or the rules adopted under ORS 466.005 to 466.385 and
11 466.992.

12 (2) If, after making an investigation under subsection (1) of this section, the department is sat-
13 isfied that sufficient grounds exist to justify a hearing upon the complaint, it shall give 10 days'
14 written notice of the time and place of the hearing and the matters to be considered at the hearing.
15 A copy of the complaint shall be furnished by the department to the respondent. Both the
16 complainant and the respondent are entitled to be heard, produce evidence and offer exhibits and
17 to require the attendance of witnesses at the hearing.

18 (3) An administrative law judge assigned from the Office of Administrative Hearings established
19 under ORS 183.605 shall hear the matter. Within 30 days after the date of the hearing and after
20 considering all evidence and testimony submitted, the [*Environmental Quality Commission shall make*
21 *a specific order as it considers necessary. Any order issued by the commission under this subsection*
22 *shall be*] **administrative law judge shall issue a final order. The order is** subject to judicial re-
23 view in the manner provided by ORS 183.480 for judicial review of orders in contested cases. The
24 costs of reporting and of transcribing the hearing for the purpose of judicial review shall be paid
25 by the party seeking judicial review.

26 **SECTION 23.** ORS 466.305 is amended to read:

27 466.305. (1) The Department of Environmental Quality shall investigate any complaint made to
28 it by any person that the operation of any PCB disposal facility is unsafe or that the operation is
29 in violation of a condition of the operator's permit or any provisions of ORS 466.025 to 466.065,
30 466.250, 466.255 (2) and (3) and 466.260 to 466.340 or the rules adopted under ORS 466.025 to 466.065,
31 466.250, 466.255 (2) and (3) and 466.260 to 466.350. Upon receiving a complaint, the department shall
32 furnish a copy of the complaint to the person holding the permit to operate the PCB disposal facility.

33 (2) If, after making an investigation under subsection (1) of this section, the department is sat-
34 isfied that sufficient grounds exist to justify a hearing upon the complaint, it shall give 10 days'
35 written notice of the time and place of the hearing and the matters to be considered at the hearing.
36 Both the complainant and the respondent are entitled to be heard, produce evidence and offer ex-
37 hibits and to require the attendance of witnesses at the hearing.

38 (3) An administrative law judge assigned from the Office of Administrative Hearings established
39 under ORS 183.605 shall hear the matter. Within 30 days after the date of the hearing and after
40 considering all evidence and testimony submitted, the [*Environmental Quality Commission shall make*
41 *a specific order as it considers necessary. Any order issued by the commission under this subsection*
42 *shall be*] **administrative law judge shall issue a final order. The order is** subject to judicial re-
43 view in the manner provided by ORS 183.480 for judicial review of orders in contested cases. The
44 costs of reporting and of transcribing the hearing for the purpose of judicial review shall be paid
45 by the party seeking judicial review.

1 **SECTION 24.** ORS 468.110 is amended to read:

2 468.110. Any person adversely affected or aggrieved by any order of the Environmental Quality
3 Commission may appeal from such order in accordance with the provisions of ORS chapter 183.
4 However, notwithstanding [*ORS 183.482 (3)*] **section 7 (6) of this 2009 Act**, relating to a stay of
5 enforcement of an agency order and the giving of bond or other undertaking related thereto, any
6 reviewing court before it may stay an order of the commission shall give due consideration to the
7 public interest in the continued enforcement of the commission's order, and may take testimony
8 thereon.

9 **SECTION 25.** ORS 471.331 is amended to read:

10 471.331. (1) Whenever the Oregon Liquor Control Commission proposes to refuse to renew or to
11 suspend or cancel any license issued under this chapter because of adverse neighborhood impact of
12 the licensee's operation, notwithstanding ORS 183.435, the commission shall grant the affected
13 licensee 20 days from notification of the proposed commission action to request a hearing.

14 (2) Notwithstanding [*ORS 183.482 (3), the Oregon Liquor Control Commission shall*] **section 7 (6)**
15 **of this 2009 Act, an administrative law judge may** not stay any order refusing a license or sus-
16 pending or canceling any license if the order was entered on grounds stated in ORS 471.313 (5) or
17 471.315 (1)(c).

18 **SECTION 26.** ORS 506.462 is amended to read:

19 506.462. (1) A person whose application for a developmental fisheries permit or a restricted
20 permit established under subsection (6) of this section, or for the renewal or transfer of a develop-
21 mental fisheries permit or restricted permit, is denied may make written request to the Commercial
22 Fishery Permit Board for review of the denial. The review provided in this subsection is in lieu of
23 any review by the State Department of Fish and Wildlife or the State Fish and Wildlife Commission.
24 The request shall be in such form and shall contain such information as the board considers appro-
25 priate. The request shall be accompanied by a nonrefundable fee of \$75. The fee shall apply toward
26 any applicable permit fees resulting from an order of the board in favor of the requesting applicant.

27 (2) The board shall review a denial as a contested case under ORS chapter 183. Orders issued
28 by the board are not subject to review by the commission, but may be appealed as provided in [*ORS*
29 *183.482*] **section 7 of this 2009 Act.**

30 (3) The board may waive requirements for renewal of a developmental fisheries permit or a re-
31 stricted permit established under subsection (6) of this section if the board finds that an individual
32 applicant fails to meet the requirements as the result of illness, accident or other circumstances
33 beyond the individual's control.

34 (4) The board may delegate to the department the board's authority to waive requirements for
35 renewal of developmental fisheries permits or restricted permits established under subsection (6) of
36 this section.

37 (5) The board may adopt such rules as it determines necessary to carry out its duties, functions
38 and powers under this section.

39 (6) Once the commission determines that a commercial harvest of a developmental fishery can
40 be sustained, it may remove that fishery from the developmental fisheries list, and may, by rule,
41 establish a restricted participation system or a restricted vessel permit system for that fishery.
42 These restricted permit systems may include, but are not limited to, provisions relating to the fol-
43 lowing matters:

44 (a) Establishment of criteria for initial entry into the restricted permit system and criteria for
45 annual qualification for continued participation in the system; and

1 (b) Establishment of terms and conditions for transferring participation rights.

2 **SECTION 27.** ORS 517.983 is amended to read:

3 517.983. (1) The applicant or any person who appeared before a permitting agency at the con-
4 solidated public hearing under ORS 517.981, either orally or in writing, regarding a permit granted
5 or denied by the permitting agency may file with the State Geologist a written request for a con-
6 solidated contested case hearing. The request shall be filed within 30 days after the date the permit
7 was granted or denied.

8 (2) Upon receipt of a request under subsection (1) of this section, the State Department of
9 Geology and Mineral Industries shall schedule a consolidated contested case hearing which shall
10 be held not less than 60 days or more than 75 days after the notice of permit issuance under ORS
11 517.982. The hearing shall be conducted in accordance with the provisions applicable to contested
12 case proceedings under ORS chapter 183. Any permit granted by a permitting agency shall be sus-
13 pended until completion of the administrative hearings process.

14 (3) Hearings under this section shall be conducted by an administrative law judge assigned from
15 the Office of Administrative Hearings established under ORS 183.605.

16 (4) The administrative law judge shall prepare a proposed order for each contested permit. A
17 party may file written exceptions to the proposed order with the permitting agency. If the permitting
18 agency determines that additional information may be included in the record, the agency shall re-
19 mand the order to the appropriate administrative law judge for further consideration. After receiv-
20 ing exceptions and hearing argument on the exceptions, the governing body or person within the
21 permitting agency responsible for making a final decision on a permit may adopt the proposed order
22 or issue a new order.

23 (5) Jurisdiction for judicial review of a permitting agency's issuance or denial of a permit is
24 conferred upon the Supreme Court. Proceedings for review shall be instituted by filing a petition in
25 the Supreme Court. The petition shall be filed within 60 days following the date the permit is issued
26 or denied. If the permit with prescribed conditions is approved, the filing of the petition for review
27 shall stay the permit during the pendency of judicial review for a period of up to six months from
28 the date the petition for review is filed. The Supreme Court may extend the stay beyond the six-
29 month period upon written request and a showing by the petitioner that the activities under the
30 permit could result in irreparable harm to the site. Except as otherwise provided in this subsection,
31 the review by the Supreme Court shall be as provided in [ORS 183.482] **section 7 of this 2009**
32 **Act.** The Supreme Court shall give priority on its docket to such a petition for review.

33 (6) When only the applicant files a petition for judicial review, the six-month stay imposed under
34 subsection (5) of this section may be removed by the permitting agency upon written request within
35 60 days after the filing of the petition and a showing by the applicant to support a finding by the
36 permitting agency that proceeding with any or all activities under the permit will not result in
37 irreparable harm to the site. In making such findings the permitting agency may require an addi-
38 tional bond or alternative security to be filed with the State Department of Geology and Mineral
39 Industries as provided in ORS 517.987. The bond shall be in an amount the permitting agency de-
40 termines necessary to assure complete restoration of the site if the petitioner elects not to complete
41 the project following judicial review. Agency denial of the request to remove the stay is subject to
42 review by the Supreme Court under such rules as the Supreme Court may establish.

43 **SECTION 28.** ORS 527.700 is amended to read:

44 527.700. (1) Any operator, timber owner or landowner affected by any finding or order of the
45 State Forester issued under ORS 527.610 to 527.770 and 527.992 may request a hearing within 30

1 days after issuance of the order. The hearing shall be commenced within 14 days after receipt of the
2 request for hearing and a final order shall be issued within 28 days of the request for the hearing
3 unless all parties agree to an extension of the time limit.

4 (2) *[The State Board of Forestry may delegate to the administrative law judge the authority to issue*
5 *final orders on matters under this section.]* Hearings provided under this section shall be conducted
6 as contested case hearings under ORS 183.413 to 183.470. The **State Board of Forestry** may estab-
7 lish such rules as it deems appropriate to carry out the provisions of this section. Appeals from
8 final hearing orders under this section shall be **as** provided in *[ORS 183.482]* **section 7 of this 2009**
9 **Act**, except that the comments of the board or the State Forester concerning a written plan are not
10 reviewable orders under ORS 183.480.

11 (3) Any person adversely affected or aggrieved by an operation described in subsection (4) of
12 this section may file a written request to the board for a hearing if the person submitted written
13 comments pertaining to the operation within the time limits established under ORS 527.670 (9).

14 (4) A request for hearing may be filed under subsection (3) of this section only if a written plan
15 was required pursuant to ORS 527.670 (3).

16 (5) A request for hearing filed under subsection (3) of this section shall be filed within 14 cal-
17 endar days of the date the State Forester completed review of the written plan and issued any
18 comments. Copies of the complete request shall be served, within the 14-day period, on the operator,
19 timber owner and landowner. The request shall include:

20 (a) A copy of the written plan on which the person is requesting a hearing;

21 (b) A copy of the comments pertaining to the operation that were filed by the person requesting
22 the hearing;

23 (c) A statement that shows the person is adversely affected or aggrieved by the operation and
24 has an interest which is addressed by the Oregon Forest Practices Act or rules adopted thereunder;
25 and

26 (d) A statement of facts that establishes that the operation is of the type described in ORS
27 527.670 (3).

28 (6) If the board finds that the person making the request meets the requirement of subsection
29 (5)(c) of this section, the board shall set the matter for hearing within 21 calendar days after receipt
30 of the request for hearing. The operator, timber owner and landowner shall be allowable parties to
31 the hearing. The person requesting the hearing may raise, in the hearing, only those issues that the
32 person raised in written comments filed under ORS 527.670 (9) relating to conformity with the rules
33 of the board. The board shall issue its own comments, which may affirm, modify or rescind comments
34 of the State Forester, if any, on the written plan within 45 days after the request for hearing was
35 filed, unless all parties agree to an extension of the time limit. The comments of the board or of
36 the State Forester concerning a written plan are not reviewable orders under ORS 183.480.

37 (7) The *[board]* **administrative law judge** may award reasonable attorney fees and expenses to
38 each of the prevailing parties against any other party who the *[board]* **administrative law judge**
39 finds presented a position without probable cause to believe the position was well-founded, or made
40 a request primarily for a purpose other than to secure appropriate action by the board.

41 (8)(a) Upon the written request of a person requesting a hearing under subsection (3) of this
42 section, a stay of the operation subject to the hearing may be granted upon a showing that:

43 (A) Commencement or continuation of the operation will constitute a violation of the rules of
44 the board;

45 (B) The person requesting the stay will suffer irreparable injury if the stay is not granted; and

1 (C) The requirements of subsections (3), (4) and (5) of this section are met.

2 (b) If the [board] **administrative law judge** grants the stay, it shall require the person re-
 3 questing the stay to give an undertaking which may be in the amount of the damages potentially
 4 resulting from the stay, but in any event shall not be less than \$15,000. The [board] **administrative**
 5 **law judge** may impose other reasonable requirements pertaining to the grant of the stay. The
 6 [board] **administrative law judge** shall limit the effect of the stay to the specific geographic area
 7 or elements of the operation for which the person requesting the stay has demonstrated a violation
 8 of the rules and irreparable injury under paragraph (a) of this subsection.

9 (c) If the [board] **administrative law judge** determines in [its] **the judge's** comments that the
 10 written plan pertaining to the operation for which the stay was granted is likely to result in com-
 11 pliance with ORS 527.610 to 527.770 or the rules of the board, the [board] **administrative law judge**
 12 may award reasonable attorney fees and actual damages in favor of each of the prevailing parties,
 13 to the extent incurred by each, against the person requesting the stay.

14 (9) If the [board] **administrative law judge** rescinds or modifies the comments on the written
 15 plan as submitted by the State Forester pertaining to any operation, the [board] **administrative law**
 16 **judge** may award reasonable attorney fees and costs against the state in favor of each of the pre-
 17 vailing parties.

18 (10) As used in this section, "person" means any individual, partnership, corporation, associ-
 19 ation, governmental subdivision or public or private organization of any character.

20 **SECTION 29.** ORS 536.075 is amended to read:

21 536.075. (1) Any party affected by a final order other than contested case issued by the Water
 22 Resources Commission or Water Resources Department may appeal the order to the Circuit Court
 23 of Marion County or to the circuit court of the county in which all or part of the property affected
 24 by the order is situated. The review shall be conducted according to the provisions of ORS 183.484,
 25 183.486, 183.497 and 183.500. A final order other than contested case issued by the Water Resources
 26 Commission or the Water Resources Department must state on the first page of the order that the
 27 order is a final order other than contested case, that the order is subject to judicial review under
 28 ORS 183.484 and that any petition for judicial review of the order must be filed within the time
 29 specified by ORS 183.484 (2). Any order other than contested case issued by the Water Resources
 30 Commission or by the Water Resources Department that does not comply with the requirements of
 31 this section is not a final order.

32 (2) Any party affected by a final order in a contested case issued by the Water Resources
 33 Commission or the Water Resources Department may appeal the order to the Court of Appeals.

34 (3) An appeal under subsection (2) of this section shall be conducted as provided in ORS
 35 [183.482] **section 7 of this 2009 Act** except as specifically provided in subsections (4), (5) and (6)
 36 of this section.

37 (4) The petition shall state the facts showing how the petitioner is adversely affected by the
 38 order and the ground or grounds upon which the petitioner contends the order should be reversed
 39 or remanded.

40 (5) The filing of a petition in either the circuit court or the Court of Appeals shall stay
 41 enforcement of the order of the commission or the department unless the commission or the de-
 42 partment determines that substantial public harm will result if the order is stayed. If the commission
 43 or the department denies the stay, the denial shall be in writing and shall specifically state the
 44 substantial public harm that will result from allowing the stay.

45 (6) The review by the Court of Appeals under subsection (2) of this section shall be on the entire

1 record forwarded by the [*commission or department*] **administrative law judge**. The court may re-
 2 mand the case for further evidence taking, correction or other necessary action. The court may af-
 3 firm, reverse, modify or supplement the order appealed from, and make such disposition of the case
 4 as the court determines to be appropriate.

5 (7) The provisions of this section shall not apply to any proceeding under ORS 537.670 to 537.695
 6 or ORS chapter 539.

7 (8) For the purposes of this section, “final order” and “contested case” have the meanings given
 8 those terms in ORS 183.310.

9 **SECTION 30.** ORS 543A.130 is amended to read:

10 543A.130. (1) If a contested case hearing is conducted under ORS 543A.120, the issues to be
 11 considered in the contested case hearing shall be limited to issues identified by the administrative
 12 law judge.

13 (2) Notwithstanding the provisions of ORS chapter 183 pertaining to contested case proceedings,
 14 the parties to any contested case hearing initiated under this section shall be limited to:

15 (a) The applicant;

16 (b) Any person who timely filed a protest; and

17 (c) Any person who timely filed a request for standing under ORS 543A.120 and who requests
 18 to intervene in the contested case hearing prior to the start of the proceeding.

19 (3) The contested case proceeding shall be conducted in accordance with the applicable pro-
 20 visions of ORS chapter 183 except:

21 (a) As provided in subsections (1) and (2) of this section; and

22 (b) An interlocutory appeal under ORS 183.480 (3) shall not be allowed.

23 (4) Each person submitting a protest or a request for standing shall raise all reasonably
 24 ascertainable issues and submit all reasonably available arguments supporting the person’s position
 25 by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or
 26 in a hearing or failure to provide sufficient specificity to afford the Water Resources Department
 27 an opportunity to respond to the issue precludes judicial review based on that issue.

28 (5) If, after the contested case hearing or, if a hearing is not held, after the close of the period
 29 allowed to file a protest, [*the Water Resources Director determines*] **it is determined** that the pro-
 30 posed reauthorization does not comply with the standards set forth in ORS 543A.025 or rules
 31 adopted by the Water Resources Commission under ORS 543A.025, [*the director shall issue*] a final
 32 order **shall be issued** rejecting the application or modifying the proposed final order to conform to
 33 the public interest. If, after the contested case hearing or, if a hearing is not held, after the close
 34 of the period allowed to file a protest, [*the director determines*] **it is determined** that the proposed
 35 reauthorization complies with ORS 543A.025, [*the director shall issue*] a final order **shall be issued**
 36 approving the application for reauthorization or otherwise modifying the proposed final order. A
 37 final order may set forth any of the provisions or restrictions to be included in the certificate con-
 38 cerning the use, control and management of the water to be appropriated for the project, including
 39 but not limited to a specification of reservoir operation and minimum releases to protect the public
 40 interest.

41 (6) If a contested case hearing is not held:

42 (a) Where the final order modifies the proposed final order, the applicant may request and the
 43 department shall schedule a contested case hearing as provided under subsection (3) of this section
 44 by submitting the information required for a protest under ORS 543A.120 within 14 days after the
 45 director issues the final order. However, the issues on which a contested case hearing may be re-

1 requested and conducted under this paragraph shall be limited to issues based on the modifications
2 to the proposed final order.

3 (b) Only the applicant or a protestant may appeal the provisions of the final order in the manner
4 established in ORS chapter 183 for appeal of orders other than contested cases.

5 *[(7) Before issuing a final order, the director or the commission, if applicable, shall make the final
6 determination of whether the proposed reauthorization or the proposed reauthorization as modified in
7 the proposed final order complies with the standards set forth in ORS 543A.025.]*

8 *[(8)] (7)* In a proceeding to reauthorize a water right for a federally licensed project, the final
9 order may be different from the proposed final order based on:

10 (a) New information developed during the federal relicensing process pertaining to environ-
11 mental impacts or assessments that reveals impacts not known at the time the proposed final order
12 was issued;

13 (b) Significant changes in the final application to the Federal Energy Regulatory Commission;

14 (c) Conditions and restrictions in the Federal Energy Regulatory Commission license that are
15 inconsistent with the water right as proposed in the proposed final order; or

16 (d) Protests received after the proposed final order is issued.

17 *[(9)] (8)* Upon *[issuing]* **issuance of** a final order, the director shall notify the applicant and each
18 person who submitted written comments or protests or otherwise requested notice of the final order
19 and send a copy of the final order to any person who requested a copy and paid the fee required
20 under ORS 536.050 (1)(p).

21 **SECTION 31.** ORS 657.683 is amended to read:

22 657.683. (1) An application for hearing under ORS 657.480, 657.679, 657.681 or 657.682 shall be
23 in writing and shall state that a determination or assessment of the Director of the Employment
24 Department or authorized representative is unjust or incorrect and that the employing unit requests
25 a hearing. The application shall set forth the objections of the employing unit to the determination
26 or assessment and the amount of contributions, if any, that the applicant admits to be due to the
27 Employment Department. An application for a hearing to review an assessment made under ORS
28 657.681 (4) that was accompanied by a demand for a bond or deposit is not valid unless the bond
29 or deposit is filed with the application in a form acceptable to the director or authorized represen-
30 tative.

31 (2) If a valid application for hearing is filed within the time provided by ORS 657.480, 657.679,
32 657.681 or 657.682, an administrative law judge shall review the determination or assessment and if
33 requested by the employing unit shall grant a hearing unless a hearing has previously been afforded
34 the employing unit on the same grounds as set forth in the application. The administrative law judge
35 shall give notice of the time and place of the hearing to the director or authorized representative
36 and shall also give notice to the employing unit by mail directed to the last-known address of the
37 employing unit of record with the director.

38 (3) Hearings under ORS 657.480, 657.679, 657.681 or 657.682 shall be conducted in accordance
39 with this chapter. The filing of an application for hearing with respect to a disputed assessment does
40 not affect the right of the director or authorized representative to perfect any liens provided by this
41 chapter.

42 (4) All testimony at any hearing held under ORS 657.480, 657.679, 657.681 or 657.682 shall be
43 recorded but need not be transcribed unless a petition for judicial review from the decision of the
44 administrative law judge is filed in the manner and within the time prescribed. At any hearing held
45 as provided in ORS 657.480, 657.679, 657.681 or 657.682, the determination or assessment of the di-

1 rector or authorized representative shall be prima facie correct and the burden shall be upon the
 2 protesting employing unit to prove that it is incorrect. Thereafter the administrative law judge shall
 3 enter the findings of fact and decision, either affirming, modifying, or setting aside the determination
 4 or assessment of the director or authorized representative and in the case of an assessment, the
 5 administrative law judge may increase or decrease the amount of the assessment. The employing
 6 unit and the director shall be promptly notified of the decision of the administrative law judge.

7 (5) A decision of the administrative law judge becomes final on the date of notification or the
 8 mailing of the decision to the director and to the employing unit at the last-known address of record
 9 with the director unless, within the time specified in [*ORS 183.480 (2)*], **section 7 (1) of this 2009**
 10 **Act, and before the filing of an appeal under section 7 of this 2009 Act**, the administrative law
 11 judge on the administrative law judge's own motion reviews the decision and issues an amended
 12 decision in which case the amended decision becomes the final decision.

13 **SECTION 32.** ORS 679.160 is amended to read:

14 679.160. (1) Any licensee who has been disciplined by the Oregon Board of Dentistry may obtain
 15 judicial review of the decision in the manner prescribed by ORS chapter 183.

16 (2) Notwithstanding ORS 676.210, enforcement of the board's disciplinary order pending appeal
 17 shall be determined pursuant to [*ORS 183.482 (3)*] **section 7 (6) of this 2009 Act**.

18 **SECTION 33.** ORS 701.149 is amended to read:

19 701.149. (1) An arbitration conducted under ORS 701.148 must be held before an administrative
 20 law judge assigned under ORS 183.600 to 183.690 to act as arbitrator on behalf of the Construction
 21 Contractors Board. The assignment of an administrative law judge to act as arbitrator is subject to
 22 a request for a different arbitrator under ORS 183.645 or a rule adopted pursuant to ORS 183.645.

23 (2) If a party to a complaint under ORS 701.145 requests a contested case hearing, the board
 24 shall schedule the hearing.

25 (3) The board may adopt rules governing the avoidance of a contested case hearing. The rules
 26 may include, but need not be limited to, a limit on the time period during which a party to a com-
 27 plaint may avoid a contested case hearing by filing a court action.

28 (4) Contested case hearings before the board must be conducted by an administrative law judge
 29 assigned under ORS 183.600 to 183.690. [*Notwithstanding ORS 670.325, the board may delegate au-*
 30 *thority to the administrative law judge to issue a final order in any matter.*]

31 [*(5) In assigning administrative law judges for arbitration and contested case hearings conducted*
 32 *under this section, the chief administrative law judge of the Office of Administrative Hearings estab-*
 33 *lished under ORS 183.605 shall defer to board requests.*]

34 [(6)] (5) If a complainant to the board files a court action, the board may require that the
 35 complainant provide status reports on the pending court action. The board may dismiss or close a
 36 complaint filed under ORS 701.139 if the complainant fails to submit status reports on a pending
 37 court action.

38 [(7)] (6) ORS 183.600 to 183.690 do not limit in any way the ability of the board to make full use
 39 of alternative dispute resolution, including mediation or arbitration, to resolve complaints against
 40 contractors filed under ORS 701.139.

41 **SECTION 34.** ORS 703.230 is amended to read:

42 703.230. (1) The Department of Public Safety Standards and Training shall conduct all pro-
 43 ceedings under ORS 703.010 to 703.310 in accordance with ORS chapter 183. Judicial review of an
 44 action of the department shall be as provided in [*ORS 183.480, 183.485, 183.490 and 183.500*] **section**
 45 **7 of this 2009 Act**.

1 (2) The Board on Public Safety Standards and Training, or the department with the board's ap-
 2 proval, shall adopt, in accordance with ORS chapter 183, rules for the administration and enforce-
 3 ment of ORS 703.010 to 703.310.

4 **SECTION 35.** ORS 737.209 is amended to read:

5 737.209. (1) The Director of the Department of Consumer and Business Services may hold a
 6 hearing on a filing made pursuant to ORS 737.207 if the director determines that such a hearing
 7 would aid the director in determining whether to approve or disapprove the filing. A hearing under
 8 this section may be held at a place designated by the director and upon not less than 10 days'
 9 written notice to the insurer or rating organization that made the filing and to any other person the
 10 director decides should be notified. A filing that is the subject of a hearing under this section be-
 11 comes effective, if approved, as provided in subsection [(4)] (3) of this section.

12 (2) A hearing held pursuant to subsection (1) of this section must be conducted by an adminis-
 13 trative law judge assigned from the Office of Administrative Hearings established under ORS
 14 183.605. [*The administrative law judge shall report findings, conclusions and recommendations to the*
 15 *director within 30 days of the close of the hearing.*] The insurer or rating organization proposing the
 16 rate filing shall have the burden of proving that the rate proposal is justified and shall pay to the
 17 director the fair and reasonable costs of the hearing, including actual necessary expenses.

18 [(3) *Within 10 days of receiving a report from the administrative law judge, the director shall issue*
 19 *an order approving or disapproving the filing.*]

20 [(4)] (3) An order issued under [subsection (3) of] this section may be reviewed as provided in
 21 ORS 183.480 to 183.540 for review of contested cases. A filing approved [by the director] under this
 22 section [shall be] **becomes** effective 10 days after the order **is** issued under [subsection (3) of] this
 23 section and [shall remain] **remains** effective during any review of the order.

24 **SECTION 36.** ORS 813.410 is amended to read:

25 813.410. (1) If the Department of Transportation receives from a police officer a report that is
 26 in substantial compliance with ORS 813.120, the department shall suspend the driving privileges of
 27 the person in this state on the 30th day after the date of arrest or, if the report indicates that the
 28 person failed a blood test, on the 60th day after receipt of the report, unless, at a hearing described
 29 under this section, the department determines that the suspension would not be valid as described
 30 in this section. A suspension of driving privileges imposed under this subsection shall be for a period
 31 of time established under ORS 813.420.

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

42 (3) If within 10 days from the date of arrest, or, if the person fails a blood test, within 10 days
 43 from the date the department sends notice of suspension, the department receives a written request
 44 for a hearing from a person whose driving privileges or commercial driver license the department
 45 proposes to suspend under this section, the department shall provide a hearing in accordance with

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

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

8 (a) The hearing shall be before an administrative law judge assigned from the Office of Admin-
9 istrative Hearings established under ORS 183.605.

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

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

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

19 [(e)] (d) Except as provided in ORS 813.440 or upon remand under ORS 813.450, the department
20 shall hold the hearing and **the administrative law judge shall** issue a final order within 30 days
21 of the date of the arrest or, if the person fails a blood test, within 60 days from the date the de-
22 partment received the report of the failure.

23 [(f)] (e) In connection with the hearing, the [*department or its authorized representative*] **admin-**
24 **istrative law judge** may administer oaths and shall issue subpoenas for the attendance of witnesses
25 at the hearing requested by the person or the department and the production of relevant documents.

26 [(g)] (f) The hearing shall be recorded by whatever means may be determined by the department
27 and shall include testimony and exhibits, if any. The record of the proceedings shall not be tran-
28 scribed unless requested by a party to the proceeding.

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

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

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

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

41 (A) 0.08 percent or more by weight if the person was not driving a commercial motor vehicle;

42 (B) 0.04 percent or more by weight if the person was driving a commercial motor vehicle; or

43 (C) Any amount if the person was under 21 years of age.

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

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

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

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

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

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

11 (7) Unless a person fails, without just cause, to appear in person or through an attorney at a
 12 hearing requested under this section, [*a person shall have the right to*] **the person or the depart-**
 13 **ment may** appeal [*any*] **the** final order [*by the department*] **of the administrative law judge** after
 14 a hearing under this section by filing a petition. The following apply to this subsection:

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

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

21 **SECTION 37.** ORS 813.460 is amended to read:

22 813.460. If the Department of Transportation verifies to its satisfaction that it has suspended the
 23 driving privileges of the wrong person under ORS 813.410 because a person arrested for driving
 24 under the influence of intoxicants gave false identification at the time of the arrest, all the following
 25 apply:

26 (1) The department shall immediately rescind the suspension order under the false name and
 27 shall issue a suspension order for the period set forth in ORS 813.420 to the person arrested.

28 (2) The department shall issue the order in the manner set forth in ORS 809.430.

29 (3) No further notice of suspension need be given.

30 (4) The time limitations in ORS 813.410 (1), (2), (3) and [*(4)(e)*] **(4)(d)** do not apply to a suspension
 31 order issued under this section.

32
 33 **CHANGE OF ADMINISTRATIVE LAW JUDGE**

34
 35 **SECTION 38.** ORS 183.645 is amended to read:

36 183.645. [(1)] After assignment of an administrative law judge from the Office of Administrative
 37 Hearings to conduct a hearing on behalf of an agency, the chief administrative law judge shall as-
 38 sign a different administrative law judge for the hearing [*upon receiving*] **if** a written request
 39 [*from*] **is made by** any party in the contested case, or [*from*] **by** the agency, **and good cause is**
 40 **shown**. The chief administrative law judge may by rule establish time limitations and procedures for
 41 requests under this section.

42 [(2)] *Only one request for a change of assignment of administrative law judge under subsection (1)*
 43 *of this section may be granted by the chief administrative law judge without a showing of good cause.*
 44 *If a party or agency fails to make a request under subsection (1) of this section within the time allowed,*
 45 *or if a party or agency objects to an administrative law judge assigned after a request for a different*

1 *administrative law judge has been granted under subsection (1) of this section, the chief administrative*
 2 *law judge shall assign a different administrative law judge only upon a showing of good cause.]*

3 *[(3) Notwithstanding subsection (1) of this section, a different administrative law judge may not be*
 4 *assigned for a hearing provided under ORS 813.410 or 813.440 on suspension of driving privileges,*
 5 *except upon a showing of good cause.]*

6
 7 **EX PARTE COMMUNICATIONS**

8
 9 **SECTION 39.** ORS 183.685 is amended to read:

10 183.685. (1) An administrative law judge assigned from the Office of Administrative Hearings
 11 who is presiding in a contested case proceeding and who receives an ex parte communication de-
 12 scribed in subsections (3) and (4) of this section shall place in the record of the pending matter:

13 (a) The name of each person from whom the administrative law judge received an ex parte
 14 communication;

15 (b) A copy of any ex parte written communication received by the administrative law judge;

16 (c) A copy of any written response to the communication made by the administrative law judge;

17 (d) A memorandum reflecting the substance of any ex parte oral communication made to the
 18 administrative law judge; and

19 (e) A memorandum reflecting the substance of any oral response made by the administrative law
 20 judge to an ex parte oral communication.

21 (2) Upon making a record of an ex parte communication under subsection (1) of this section, an
 22 administrative law judge shall advise the agency and all parties in the proceeding that an ex parte
 23 communication has been made a part of the record. The administrative law judge shall allow the
 24 agency and parties an opportunity to respond to the ex parte communication.

25 (3) Except as otherwise provided in this section, the provisions of this section apply to commu-
 26 nications that:

27 (a) Relate to a legal or factual issue in a contested case proceeding;

28 (b) Are made directly or indirectly to an administrative law judge while the proceeding is
 29 pending; and

30 (c) Are made without notice and opportunity for the agency and all parties to participate in the
 31 communication.

32 (4) The provisions of this section apply to any ex parte communication made directly or indi-
 33 rectly to an administrative law judge, or to any agent of an administrative law judge, by:

34 (a) A party;

35 (b) A party's representative or legal adviser;

36 (c) Any other person who has a direct or indirect interest in the outcome of the proceeding;

37 (d) Any other person with personal knowledge of the facts relevant to the proceeding; or

38 (e) Any officer, employee or agent of [*the*] **an** agency [*that is using the administrative law judge*
 39 *to conduct the hearing*].

40 (5) The provisions of this section do not apply to:

41 (a) Communications made to an administrative law judge by other administrative law judges;

42 **or**

43 (b) Communications made to an administrative law judge by any person employed by the office
 44 to assist the administrative law judge[; or]

45 [*(c) Communications made to an administrative law judge by an assistant attorney general if the*

1 *communications are made in response to a request from the administrative law judge and the assistant*
 2 *attorney general is not advising the agency that is conducting the hearing].*

3
 4 **TRAINING OF ADMINISTRATIVE LAW JUDGES BY AGENCIES**

5
 6 **SECTION 40.** ORS 183.680 is amended to read:

7 183.680. (1) The chief administrative law judge for the Office of Administrative Hearings, work-
 8 ing in coordination with the Attorney General, shall design and implement a standards and training
 9 program for administrative law judges employed by the office and for persons seeking to be em-
 10 ployed as administrative law judges by the office. The program shall include:

11 (a) The establishment of an ethical code for persons employed as administrative law judges by
 12 the office.

13 (b) Training for administrative law judges employed by the office that is designed to assist in
 14 identifying cases that are appropriate for the use of alternative dispute resolution processes.

15 (2) The program established by the chief administrative law judge under this section may in-
 16 clude:

17 (a) The conducting of courses on administrative law, evidence, hearing procedures and other
 18 issues that arise in presiding over administrative hearings, including courses designed to provide
 19 any training required by the chief administrative law judge for administrative law judges employed
 20 by the office.

21 (b) The certification of courses offered by other persons for the purpose of any training required
 22 by the chief administrative law judge for administrative law judges employed by the office.

23 (c) The provision of specialized training for administrative law judges in subject matter areas
 24 affecting particular agencies required to use administrative law judges assigned from the office.

25 (3) The chief administrative law judge is bound by the ethical code established under this sec-
 26 tion and must satisfactorily complete training required of administrative law judges employed by the
 27 office other than specialized training in subject matter areas affecting particular agencies.

28 **(4) The chief administrative law judge shall ensure that training for an administrative**
 29 **law judge is not provided by an agency when the administrative law judge is conducting a**
 30 **hearing on behalf of the agency and the training relates to matters to be decided by the judge**
 31 **in the proceeding.**

32 **SECTION 41.** Section 7 of this 2009 Act and the amendments to ORS 25.768, 183.310,
 33 183.411, 183.480, 183.486, 183.625, 183.645, 183.650, 183.685, 196.825, 196.835, 196.860, 293.316,
 34 339.430, 358.495, 390.659, 390.663, 421.647, 421.653, 448.255, 466.185, 466.305, 468.110, 471.331,
 35 506.462, 517.983, 527.700, 536.075, 543A.130, 657.683, 679.160, 701.149, 703.230, 737.209, 813.410,
 36 813.450 and 813.460 by sections 1 to 5 and 8 to 39 of this 2009 Act apply only to hearings for
 37 which an administrative law judge is assigned from the Office of Administrative Hearings to
 38 an agency on or after the effective date of this 2009 Act.

39 **SECTION 42.** The unit captions used in this 2009 Act are provided only for the conven-
 40 ience of the reader and do not become part of the statutory law of this state or express any
 41 legislative intent in the enactment of this 2009 Act.