

House Bill 3277

Sponsored by Representative BENTZ

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 court to declare administrative rule invalid if rule is arbitrary, capricious or abuse of discretion by agency. Requires court to review challenge to rule as arbitrary, capricious or abuse of discretion based on circumstances existing at time proceedings are commenced, not circumstances existing at time rule was adopted.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to judicial review of administrative rules; creating new provisions; amending ORS 183.400;
3 and declaring an emergency.

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

5 **SECTION 1.** ORS 183.400 is amended to read:

6 183.400. (1) The validity of any rule may be determined upon a petition by any person to the
7 Court of Appeals in the manner provided for review of orders in contested cases. The court shall
8 have jurisdiction to review the validity of the rule whether or not the petitioner has first requested
9 the agency to pass upon the validity of the rule in question, but not when the petitioner is a party
10 to an order or a contested case in which the validity of the rule may be determined by a court.

11 (2) The validity of any applicable rule may also be determined by a court, upon review of an
12 order in any manner provided by law or pursuant to ORS 183.480 or upon enforcement of such rule
13 or order in the manner provided by law.

14 (3) Judicial review of a rule shall be limited to an examination of:

15 (a) The rule under review;

16 (b) The statutory provisions authorizing the rule; and

17 (c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking
18 procedures.

19 (4) The court shall declare the rule invalid only if it finds that the rule:

20 (a) Violates constitutional provisions;

21 (b) Exceeds the statutory authority of the agency; *[or]*

22 (c) Was adopted without compliance with applicable rulemaking procedures; **or**

23 **(d) Is arbitrary, capricious or an abuse of discretion by the agency.**

24 (5) In the case of disputed allegations of irregularities in procedure which, if proved, would
25 warrant reversal or remand, the Court of Appeals may refer the allegations to a master appointed
26 by the court to take evidence and make findings of fact. The court's review of the master's findings
27 of fact shall be de novo on the evidence.

28 (6) The court shall not declare a rule invalid solely because it was adopted without compliance
29 with applicable rulemaking procedures after a period of two years after the date the rule was filed
30 in the office of the Secretary of State, if the agency attempted to comply with those procedures and

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 its failure to do so did not substantially prejudice the interests of the parties.

2 **(7) If it is alleged that a rule is arbitrary, capricious or an abuse of discretion by the**
3 **agency, the court shall review the rule based on the circumstances existing at the time the**
4 **proceedings are commenced, and not based on the circumstances existing at the time the**
5 **rule was adopted.**

6 **SECTION 2. The amendments to ORS 183.400 by section 1 of this 2011 Act apply to all**
7 **administrative rules, whether adopted before, on or after the effective date of this 2011 Act.**

8 **SECTION 3. This 2011 Act being necessary for the immediate preservation of the public**
9 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
10 **on its passage.**

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