

# D R A F T

## SUMMARY

Requires court to declare administrative rule invalid if rule is arbitrary, capricious or abuse of discretion by agency.

Authorizes court to review information related to rule that was available to agency 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;  
3 amending ORS 183.400; 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  
7 by any person to the Court of Appeals in the manner provided for review of  
8 orders in contested cases. The court shall have jurisdiction to review the  
9 validity of the rule whether or not the petitioner has first requested the  
10 agency to pass upon the validity of the rule in question, but not when the  
11 petitioner is a party to an order or a contested case in which the validity  
12 of the rule may be determined by a court.

13 (2) The validity of any applicable rule may also be determined by a court,  
14 upon review of an order in any manner provided by law or pursuant to ORS  
15 183.480 or upon enforcement of such rule or order in the manner provided  
16 by law.

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

18 (a) The rule under review;

19 (b) The statutory provisions authorizing the rule; [*and*]

1 (c) Copies of all documents necessary to demonstrate compliance with  
2 applicable rulemaking procedures[.]; **and**

3 **(d) Documents and other information related to the rule that were**  
4 **available to the agency at the time the rule was adopted.**

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

6 (a) Violates constitutional provisions;

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

8 (c) Was adopted without compliance with applicable rulemaking  
9 procedures[.]; **or**

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

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

16 (6) The court shall not declare a rule invalid solely because it was  
17 adopted without compliance with applicable rulemaking procedures after a  
18 period of two years after the date the rule was filed in the office of the  
19 Secretary of State, if the agency attempted to comply with those procedures  
20 and its failure to do so did not substantially prejudice the interests of the  
21 parties.

22 **SECTION 2. The amendments to ORS 183.400 by section 1 of this**  
23 **2013 Act apply to administrative rules adopted before, on or after the**  
24 **effective date of this 2013 Act.**

25 **SECTION 3. This 2013 Act being necessary for the immediate pres-**  
26 **ervation of the public peace, health and safety, an emergency is de-**  
27 **clared to exist, and this 2013 Act takes effect on its passage.**

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