

# House Bill 3296

Sponsored by Representative HEARD

## 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**.

Allows lay representation of any party to contested case hearing.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to lay representation in contested case hearings; amending ORS 183.457; and declaring an  
3 emergency.

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

5 **SECTION 1.** ORS 183.457 is amended to read:

6 183.457. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, *[and unless otherwise authorized by an-*  
7 *other law, a person participating in]* **a party to** a contested case hearing *[conducted by an agency*  
8 *described in this subsection]* may be represented by an attorney or by an authorized representative  
9 subject to the provisions of subsection (2) of this section. The Attorney General shall prepare model  
10 rules for proceedings with lay representation that do not have the effect of precluding lay repre-  
11 sentation. No rule adopted by a state agency shall have the effect of precluding lay representation.  
12 *[The agencies before which an authorized representative may appear are:]*

13 *[(a) The State Landscape Contractors Board in the administration of the Landscape Contractors*  
14 *Law.]*

15 *[(b) The State Department of Energy and the Energy Facility Siting Council.]*

16 *[(c) The Environmental Quality Commission and the Department of Environmental Quality.]*

17 *[(d) The Department of Consumer and Business Services for proceedings in which an insured ap-*  
18 *pears pursuant to ORS 737.505.]*

19 *[(e) The Department of Consumer and Business Services and any other agency for the purpose of*  
20 *proceedings to enforce the state building code, as defined by ORS 455.010.]*

21 *[(f) The State Fire Marshal in the Department of State Police.]*

22 *[(g) The Department of State Lands for proceedings regarding the issuance or denial of fill or re-*  
23 *moval permits under ORS 196.800 to 196.825.]*

24 *[(h) The Public Utility Commission.]*

25 *[(i) The Water Resources Commission and the Water Resources Department.]*

26 *[(j) The Land Conservation and Development Commission and the Department of Land Conserva-*  
27 *tion and Development.]*

28 *[(k) The State Department of Agriculture, for purposes of hearings under ORS 215.705.]*

29 *[(L) The Bureau of Labor and Industries.]*

30 (2) *[A person participating in a contested case hearing as provided in subsection (1) of this section*  
31 *may appear by an authorized representative if:]*

**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        [(a) *The agency conducting the contested case hearing has determined that appearance of such a*  
2 *person by an authorized representative will not hinder the orderly and timely development of the record*  
3 *in the type of contested case hearing being conducted;*]

4        [(b) *The agency conducting the contested case hearing allows, by rule, authorized representatives*  
5 *to appear on behalf of such participants in the type of contested case hearing being conducted; and]*

6        [(c)] The officer presiding at the contested case hearing may exercise discretion to limit an au-  
7 thorized representative’s presentation of evidence, examination and cross-examination of witnesses,  
8 or presentation of factual arguments to ensure the orderly and timely development of the hearing  
9 record, and shall not allow an authorized representative to present legal arguments except to the  
10 extent authorized under subsection (3) of this section.

11        (3) The officer presiding at a contested case hearing in which an authorized representative ap-  
12 pears [*under the provisions of this section may*] **shall** allow the authorized representative to present  
13 evidence, examine and cross-examine witnesses, and make arguments relating to the:

- 14        (a) Application of statutes and rules to the facts in the contested case;
- 15        (b) Actions taken by the agency in the past in similar situations;
- 16        (c) Literal meaning of the statutes or rules at issue in the contested case;
- 17        (d) Admissibility of evidence; and
- 18        (e) Proper procedures to be used in the contested case hearing.

19        (4) Upon judicial review, no limitation imposed by an agency presiding officer on the partic-  
20 ipation of an authorized representative shall be the basis for reversal or remand of agency action  
21 unless the limitation resulted in substantial prejudice to a person entitled to judicial review of the  
22 agency action.

23        (5) For the purposes of this section, “authorized representative” means a member of a partic-  
24 ipating partnership, an authorized officer or regular employee of a participating corporation, asso-  
25 ciation or organized group, or an authorized officer or employee of a participating governmental  
26 authority other than a state agency.

27        **SECTION 2. This 2015 Act being necessary for the immediate preservation of the public**  
28 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**  
29 **on its passage.**