

Senate Bill 587

Sponsored by Senator KNOPP (Presession filed.)

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 decide questions of law de novo in proceedings for judicial review of agency actions.

A BILL FOR AN ACT

1
2 Relating to judicial review of agency action; creating new provisions; and amending ORS 183.400
3 and 183.482.

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

5 **SECTION 1. (1) Notwithstanding any other provision of law, in any proceeding for judicial**
6 **review of an agency's action authorized by law, the court shall decide de novo all questions**
7 **of law including the interpretation of constitutional and statutory provisions and rules**
8 **adopted by agencies.**

9 (2) As used in this section, "agency" has the meaning given that term in ORS 183.310.

10 **SECTION 2.** ORS 183.400 is amended to read:

11 183.400. (1) The validity of any rule may be determined upon a petition by any person to the
12 Court of Appeals in the manner provided for review of orders in contested cases. The court shall
13 have jurisdiction to review the validity of the rule whether or not the petitioner has first requested
14 the agency to pass upon the validity of the rule in question, but not when the petitioner is a party
15 to an order or a contested case in which the validity of the rule may be determined by a court.

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

19 (3) Judicial review of a rule shall be [*limited to*] **de novo and shall include** an examination of:

20 (a) The rule under review;

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

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

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

25 (a) Violates constitutional **or statutory** provisions;

26 (b) Exceeds the statutory authority of the agency; or

27 (c) Was adopted without compliance with applicable rulemaking procedures.

28 (5) In the case of disputed allegations of irregularities in procedure [*which*] **that**, if proved,
29 would warrant reversal or remand, the Court of Appeals may refer the allegations to a master ap-
30 pointed by the court to take evidence and make findings of fact. The court's review of the master's
31 findings of fact shall be de novo on the evidence.

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

5 **SECTION 3.** ORS 183.482 is amended to read:

6 183.482. (1) Jurisdiction for judicial review of contested cases is conferred upon the Court of
7 Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The
8 petition shall be filed within 60 days only following the date the order upon which the petition is
9 based is served unless otherwise provided by statute. If a petition for rehearing has been filed, then
10 the petition for review shall be filed within 60 days only following the date the order denying the
11 petition for rehearing is served. If the agency does not otherwise act, a petition for rehearing or
12 reconsideration shall be deemed denied the 60th day following the date the petition was filed, and
13 in such cases, petition for judicial review shall be filed within 60 days only following such date. Date
14 of service shall be the date on which the agency delivered or mailed its order in accordance with
15 ORS 183.470.

16 (2) The petition shall state the nature of the order the petitioner desires reviewed, and shall
17 state whether the petitioner was a party to the administrative proceeding, was denied status as a
18 party or is seeking judicial review as a person adversely affected or aggrieved by the agency order.
19 In the latter case, the petitioner shall, by supporting affidavit, state the facts showing how the
20 petitioner is adversely affected or aggrieved by the agency order. Before deciding the issues raised
21 by the petition for review, the Court of Appeals shall decide, from facts set forth in the affidavit,
22 whether or not the petitioner is entitled to petition as an adversely affected or an aggrieved person.
23 Copies of the petition shall be served by registered or certified mail upon the agency, and all other
24 parties of record in the agency proceeding.

25 (3)(a) The filing of the petition shall not stay enforcement of the agency order, but the agency
26 may do so upon a showing of:

27 (A) Irreparable injury to the petitioner; and

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

29 (b) When a petitioner makes the showing required by paragraph (a) of this subsection, the
30 agency shall grant the stay unless the agency determines that substantial public harm will result if
31 the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically
32 state the substantial public harm that would result from the granting of the stay.

33 (c) When the agency grants a stay, the agency may impose such reasonable conditions as the
34 giving of a bond, irrevocable letter of credit or other undertaking and that the petitioner file all
35 documents necessary to bring the matter to issue before the Court of Appeals within specified rea-
36 sonable periods of time.

37 (d) Agency denial of a motion for stay is subject to review by the Court of Appeals under such
38 rules as the court may establish.

39 (4) Within 30 days after service of the petition, or within such further time as the court may
40 allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire
41 record of the proceeding under review, but, by stipulation of all parties to the review proceeding,
42 the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may
43 be taxed by the court for the additional costs. The court may require or permit subsequent cor-
44 rections or additions to the record when deemed desirable. Except as specifically provided in this
45 subsection, the cost of the record shall not be taxed to the petitioner or any intervening party.

1 However, the court may tax such costs and the cost of agency transcription of record to a party
2 filing a frivolous petition for review.

3 (5) If, on review of a contested case, before the date set for hearing, application is made to the
4 court for leave to present additional evidence, and it is shown to the satisfaction of the court that
5 the additional evidence is material and that there were good and substantial reasons for failure to
6 present it in the proceeding before the agency, the court may order that the additional evidence be
7 taken before the agency upon such conditions as the court deems proper. The agency may modify
8 its findings and order by reason of the additional evidence and shall, within a time to be fixed by
9 the court, file with the reviewing court, to become a part of the record, the additional evidence,
10 together with any modifications or new findings or orders, or its certificate that the agency elects
11 to stand on its original findings and order, as the case may be.

12 (6) At any time subsequent to the filing of the petition for review and prior to the date set for
13 hearing the agency may withdraw its order for purposes of reconsideration. If an agency withdraws
14 an order for purposes of reconsideration, the agency shall, within such time as the court may allow,
15 affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after
16 withdrawal for purposes of reconsideration, the petitioner may refile the petition for review and the
17 review shall proceed upon the revised order. An amended petition for review shall not be required
18 if the agency, on reconsideration, affirms the order or modifies the order with only minor changes.
19 If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order
20 in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid
21 from funds available to the agency.

22 (7) Review of a contested case shall be confined to the record, and the court shall not substitute
23 its judgment for that of the agency as to any issue of fact [*or agency discretion*]. In the case of dis-
24 puted allegations of irregularities in procedure before the agency not shown in the record [*which*]
25 **that**, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations
26 to a master appointed by the court to take evidence and make findings of fact upon them. The court
27 shall remand the order for further agency action if the court finds that either the fairness of the
28 proceedings or the correctness of the action may have been impaired by a material error in proce-
29 dure or a failure to follow prescribed procedure, including a failure by the presiding officer to
30 comply with the requirements of ORS 183.417 (8).

31 (8)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has
32 erroneously interpreted a provision of law and that a correct interpretation compels a particular
33 action, the court shall:

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

35 (B) Remand the case to the agency for further action under a correct interpretation of the pro-
36 vision of law.

37 (b) The court shall remand the order to the agency if the court finds the agency's exercise of
38 discretion to be:

39 (A) Outside the range of discretion delegated to the agency by law;

40 (B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency
41 practice, if the inconsistency is not explained by the agency; or

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

43 (c) The court shall set aside or remand the order if the court finds that the order is not sup-
44 ported by substantial evidence in the record. Substantial evidence exists to support a finding of fact
45 when the record, viewed as a whole, would permit a reasonable person to make that finding.

1 **SECTION 4. The amendments to ORS 183.400 and 183.482 by sections 2 and 3 of this 2017**
2 **Act apply to judicial review proceedings instituted by the filing of a petition on or after the**
3 **effective date of this 2017 Act.**

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