

Senate Bill 349

Sponsored by Senator THATCHER (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**.

Directs court reviewing agency order to set aside or remand order if court finds that agency action, findings or conclusions were arbitrary or capricious.

A BILL FOR AN ACT

1
2 Relating to judicial review of orders; creating new provisions; and amending ORS 183.482 and
3 183.484.

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

5 **SECTION 1.** 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

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 state the substantial public harm that would result from the granting of the stay.

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

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

8 (4) Within 30 days after service of the petition, or within such further time as the court may
9 allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire
10 record of the proceeding under review, but, by stipulation of all parties to the review proceeding,
11 the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may
12 be taxed by the court for the additional costs. The court may require or permit subsequent cor-
13 rections or additions to the record when deemed desirable. Except as specifically provided in this
14 subsection, the cost of the record shall not be taxed to the petitioner or any intervening party.
15 However, the court may tax such costs and the cost of agency transcription of record to a party
16 filing a frivolous petition for review.

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

26 (6) At any time subsequent to the filing of the petition for review and prior to the date set for
27 hearing the agency may withdraw its order for purposes of reconsideration. If an agency withdraws
28 an order for purposes of reconsideration, the agency shall, within such time as the court may allow,
29 affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after
30 withdrawal for purposes of reconsideration, the petitioner may refile the petition for review and the
31 review shall proceed upon the revised order. An amended petition for review shall not be required
32 if the agency, on reconsideration, affirms the order or modifies the order with only minor changes.
33 If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order
34 in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid
35 from funds available to the agency.

36 (7) Review of a contested case shall be confined to the record, and the court shall not substitute
37 its judgment for that of the agency as to any issue of fact or agency discretion. In the case of dis-
38 puted allegations of irregularities in procedure before the agency not shown in the record which, if
39 proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a
40 master appointed by the court to take evidence and make findings of fact upon them. The court shall
41 remand the order for further agency action if the court finds that either the fairness of the pro-
42 ceedings or the correctness of the action may have been impaired by a material error in procedure
43 or a failure to follow prescribed procedure, including a failure by the presiding officer to comply
44 with the requirements of ORS 183.417 (8).

45 (8)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has

1 erroneously interpreted a provision of law and that a correct interpretation compels a particular
 2 action, the court shall:

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

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

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

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

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

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

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

15 **(d) The court shall set aside or remand the order if the court finds that the agency action**
 16 **or the findings or conclusions supporting the order were arbitrary or capricious.**

17 **SECTION 2.** ORS 183.484 is amended to read:

18 183.484. (1) Jurisdiction for judicial review of orders other than contested cases is conferred
 19 upon the Circuit Court for Marion County and upon the circuit court for the county in which the
 20 petitioner resides or has a principal business office. Proceedings for review under this section shall
 21 be instituted by filing a petition in the Circuit Court for Marion County or the circuit court for the
 22 county in which the petitioner resides or has a principal business office.

23 (2) Petitions for review shall be filed within 60 days only following the date the order is served,
 24 or if a petition for reconsideration or rehearing has been filed, then within 60 days only following
 25 the date the order denying such petition is served. If the agency does not otherwise act, a petition
 26 for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition
 27 was filed, and in such case petition for judicial review shall be filed within 60 days only following
 28 such date. Date of service shall be the date on which the agency delivered or mailed its order in
 29 accordance with ORS 183.470.

30 (3) The petition shall state the nature of the petitioner's interest, the facts showing how the
 31 petitioner is adversely affected or aggrieved by the agency order and the ground or grounds upon
 32 which the petitioner contends the order should be reversed or remanded. The review shall proceed
 33 and be conducted by the court without a jury.

34 (4) At any time subsequent to the filing of the petition for review and prior to the date set for
 35 hearing, the agency may withdraw its order for purposes of reconsideration. If an agency withdraws
 36 an order for purposes of reconsideration, it shall, within such time as the court may allow, affirm,
 37 modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal
 38 for purposes of reconsideration, the petitioner may refile the petition for review and the review shall
 39 proceed upon the revised order. An amended petition for review shall not be required if the agency,
 40 on reconsideration, affirms the order or modifies the order with only minor changes. If an agency
 41 withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of
 42 the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds
 43 available to the agency.

44 (5)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has
 45 erroneously interpreted a provision of law and that a correct interpretation compels a particular

1 action, it shall:

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

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

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

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

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

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

11 (c) The court shall set aside or remand the order if it finds that the order is not supported by
12 substantial evidence in the record. Substantial evidence exists to support a finding of fact when the
13 record, viewed as a whole, would permit a reasonable person to make that finding.

14 **(d) The court shall set aside or remand the order if the court finds that the agency action**
15 **or the findings or conclusions supporting the order were arbitrary or capricious.**

16 (6) In the case of reversal the court shall make special findings of fact based upon the evidence
17 in the record and conclusions of law indicating clearly all aspects in which the agency's order is
18 erroneous.

19 **SECTION 3. The amendments to ORS 183.482 and 183.484 by sections 1 and 2 of this 2019**
20 **Act apply to orders served on or after the effective date of this 2019 Act.**

21