

House Bill 2422

Sponsored by Representative MOORE-GREEN; Representative NEARMAN (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 that declares administrative rule invalid to award reasonable attorney fees to petitioner.

A BILL FOR AN ACT

1
2 Relating to administrative rules; creating new provisions; and amending ORS 183.400.

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

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

5 183.400. (1) The validity of any rule may be determined upon a petition by any person to the
6 Court of Appeals in the manner provided for review of orders in contested cases. The court shall
7 have jurisdiction to review the validity of the rule whether or not the petitioner has first requested
8 the agency to pass upon the validity of the rule in question, but not when the petitioner is a party
9 to an order or a contested case in which the validity of the rule may be determined by a court.

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

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

14 (a) The rule under review;

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

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

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

19 (a) Violates constitutional provisions;

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

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

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

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

30 **(7) Notwithstanding ORS 183.482, if the court declares a rule invalid under this section,**
31 **the court shall award reasonable attorney fees to the petitioner to be paid from funds**

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 available to the agency.

2 **SECTION 2.** The amendments to ORS 183.400 by section 1 of this 2021 Act apply to pe-
3 titions for judicial review filed on or after the effective date of this 2021 Act.

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