

House Bill 2154

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen F. Rosenblum)

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**.

Clarifies date of service of administrative order for purposes of time for filing petition for judicial review of order.

Declares emergency, effective on passage.

A BILL FOR AN ACT

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

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.
14 *[Date of service shall be the date on which the agency delivered or mailed its order in accordance with*
15 *ORS 183.470.]* **Date of service is the date on which the agency order is mailed in accordance**
16 **with ORS 183.470 or, if delivered by means other than mail, the date on which the order is**
17 **delivered.**

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

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

29 (A) Irreparable injury to the petitioner; and

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

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

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

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

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

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

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

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

1 or a failure to follow prescribed procedure, including a failure by the presiding officer to comply
 2 with the requirements of ORS 183.417 (8).

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

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

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

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

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

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

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

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

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

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

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

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

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

1 available to the agency.

2 (5)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has
3 erroneously interpreted a provision of law and that a correct interpretation compels a particular
4 action, it shall:

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

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

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

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

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

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

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

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

20 **SECTION 3. The amendments to ORS 183.482 and 183.484 apply to orders served before,**
21 **on and after the effective date of this 2021 Act.**

22 **SECTION 4. This 2021 Act being necessary for the immediate preservation of the public**
23 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
24 **on its passage.**

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