

## Chapter 183

### 1971 REPLACEMENT PART

## Administrative Procedures and Rules of State Agencies

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§ 183.310 STATE EXECUTIVE DEPARTMENT AND ORGANIZATION

183.010 [Repealed by 1971 c.734 §21]

183.020 [Repealed by 1971 c.734 §21]

183.030 [Repealed by 1971 c.734 §21]

183.040 [Repealed by 1971 c.734 §21]

183.050 [Repealed by 1971 c.734 §21]

183.060 [1957 c.147 §1; repealed by 1969 c.292 §3]

183.310 Definitions for ORS 183.310 to 183.500. As used in ORS 183.310 to 183.500:

(1) "Agency" means any state board, commission, department, or division thereof, or officer authorized by law to make rules or to issue orders, except those in the legislative and judicial branches.

(2) "Contested case" means a proceeding before an agency:

(a) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard; or

(b) Where the agency has discretion to suspend or revoke a right or privilege of a person; or

(c) For the suspension, revocation or refusal to renew or issue a license required to pursue any commercial activity, trade, occupation or profession where the licensee or applicant for a license demands such hearing; or

(d) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415, 183.425 and 183.450 to 183.470.

(3) "License" includes the whole or part of any agency permit, certificate, approval, registration or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.

(4) "Order" means any agency action expressed verbally or in writing directed to a named person or named persons, other than employes, officers or members of an agency, but including agency action under ORS chapter 657 making determination for purposes of unemployment compensation of employes of the state and agency action under ORS chapter 240 which grants, denies, modifies, suspends or revokes any right or privilege of such person.

(5) "Party" means each person or agency entitled as of right to a hearing before the agency, or named or admitted as a party.

(6) "Person" means any individual,

partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.

(7) "Rule" means any agency directive, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) Internal management directives, regulations or statements between agencies, or their officers or their employes, or within an agency, between its officers or between employes, unless hearing is required by statute, or action by agencies directed to other agencies or other units of government.

(b) Declaratory rulings issued pursuant to ORS 183.410 or 305.105.

(c) Intra-agency memoranda.

(d) Executive orders of the Governor. [1957 c.717 §1; 1965 c.285 §78a; 1967 c.419 §32; 1969 c.80 §37a; 1971 c.734 §1]

183.315 Application of ORS 183.310 to 183.500 to certain agencies; exemptions granted by Governor; duration of exemption.

(1) The provisions of ORS 183.340, 183.410, 183.415, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.480 do not apply to the Department of Revenue, State Accident Insurance Fund, Public Utility Commissioner, or Workmen's Compensation Board. The provisions of ORS 183.310 to 183.500 do not apply to the State Board of Parole and Probation.

(2) Notwithstanding ORS 183.310 to 183.500, except as provided in this section, ORS 183.310 to 183.500 does not apply with respect to actions of the Governor authorized under ORS chapter 240.

(3) The provisions of ORS 183.415, 183.425, 183.440, 183.450 and 183.460 do not apply to the Employment Division and the Public Welfare Division, ORS 183.470 does not apply to the Public Utility Commissioner, and ORS 183.410 does not apply to the Employment Division.

(4) Upon application of any agency, the Governor may, exempt any agency rule or order or class of rules or orders from a requirement of ORS 183.310 to 183.500, when:

(a) The Attorney General has certified that such requirement would conflict with any provisions of federal law or rules with which the agency must comply as a condition to the receipt of federal funds, or in order to permit employers or other persons in the

state to receive tax credits or other benefits under any federal law; or

(b) The Governor has found that conformity with such requirements of ORS 183.310 to 183.500 would be so inconvenient or impracticable as to defeat the purpose of the rule or order, and is not in the public interest, in light of the nature of the rule or order and in light of the enabling act or other laws affecting the agency.

(5) When the Governor exempts an agency from a requirement of ORS 183.310 to 183.500 pursuant to subsection (4) of this section, he shall establish alternative procedures for the agency action consistent, in so far as possible, with the intent and purpose of ORS 183.310 to 183.500.

(a) Prior to the granting of any exemption authorized by this section the Governor shall, after notice, hold a public hearing after notice as provided by ORS 183.335, or he may designate the Attorney General to hold the required hearing.

(b) An exemption, and any alternative procedure prescribed shall terminate upon the adjournment of the next regular legislative session after issuance of the exemption. [1971 c.734 §19]

**183.317 Exemption of Employment Division.** Notwithstanding ORS 183.315, the Employment Division shall be exempt from the provisions of ORS 183.310 to 183.500 to the extent that a formal finding of the United States Secretary of Labor is made that such provision conflicts with the terms of the federal law, acceptance of which by the state is a condition precedent to continued certification by the United States Secretary of Labor of the state's law. [1971 c.734 §187]

**Note:** ORS 183.317 was not added to and made a part of ORS 183.310 to 183.500 by legislative action.

**183.320** [1957 c.717 §15; repealed by 1971 c.734 §21]

**183.330 General requirements for rule-making agencies; service of orders.** (1) In addition to other rulemaking requirements imposed by law, each agency shall:

(a) Publish and file with the Secretary of State a description of its organization and the methods whereby the public may obtain information or make submissions or requests.

(b) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available.

(c) Make available for public inspection all rules, final orders, decisions and opinions. No matter prohibited from public disclosure by ORS 314.835, 657.665, 657.670, or similar statutes, shall be required to be made available for public inspection by this subsection.

(2) An order shall not be effective as to any person or party unless it is served upon him either personally or by mail. This subsection is not applicable in favor of any person or party who has actual knowledge of the order.

[1957 c.717 §2; 1971 c.734 §4]

**183.335 Prerequisites to adoption of rules; emergency adoption of temporary rule; application; substantial compliance required.**

(1) Prior to the adoption, amendment or repeal of any rule, the agency shall:

(a) Give notice of its intended action not less than 20 days prior thereto by publication in the bulletin referred to in ORS 183.360. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time, place and manner in which interested persons may present their views thereon.

(b) Afford all interested persons reasonable opportunity to submit data, views or arguments, either orally or in writing. The agency shall consider fully any such written or oral submission.

(2) If an agency finds that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned, and sets forth the specific reasons for its finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt a rule without notice. Such rule is temporary and may be effective for a period of not longer than 120 days, but the adoption of an identical rule under paragraphs (a) and (b) of subsection (1) of this section is not precluded.

(3) This section does not apply to rules establishing an effective date for a previously effective rule or establishing a period during which a provision of a previously effective rule will apply.

(4) This section does not apply to ORS chapter 279.

(5) No rule adopted after September 9, 1971, is valid unless adopted in substantial compliance with this section. [1971 c.734 §3]

**183.340 Model rules of procedure to be published; adoption by reference of model rules permitted.** The Attorney General shall prepare model rules of procedure appropriate for use by as many agencies as possible. Any agency may adopt all or part of the model rules by reference. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules. The compilation of the model rules shall include a reference to the agencies which have adopted all or part of such rules, and in the case of partial adoption by an agency, to the specific rules or parts thereof adopted. Neither the Attorney General nor any agency shall adopt, amend or repeal the model rules or any part thereof unless he or it otherwise complies with the provisions of ORS 183.310 to 183.500 relating to adoption, amendment and repeal of rules. [1957 c.717 §3 (3); 1971 c.734 §6]

**183.350** [1957 c.717 §3 (1), (2); repealed by 1971 c.734 §21]

**183.355 Filing and taking effect of rules; filing of executive orders; copies.** (1) Each agency shall file in the office of the Secretary of State a certified copy of each rule adopted by it, including all rules in effect on September 9, 1971, and not previously filed as provided by law. The Secretary of State shall keep a permanent register of the rules open to public inspection.

(2) Each rule adopted after September 9, 1971, is effective upon publication in the bulletin provided in ORS 183.360, except that:

(a) If a later effective date is required by statute or specified in the rule, the later date is the effective date.

(b) Subject to applicable constitutional or statutory provisions, a temporary rule becomes effective immediately upon filing with the Secretary of State, or at a designated later date prior to publication if the agency finds that the designated date is necessary for the public interest or the interest of the parties concerned. The agency finding and a statement of the reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make temporary rules known to the persons who may be affected by them.

(3) When a rule is amended or vacated, rescinded or otherwise repealed by an agency, the agency shall forthwith certify that fact to the Secretary of State who shall enter that fact on the certified copy of the rule.

(4) A certified copy of each executive order issued, prescribed or promulgated by the Governor shall be filed in the office of the Secretary of State.

(5) No rule of which a certified copy is required to be filed, and no rule of which a duplicate original or authenticated copy before September 9, 1971, was required to be filed shall be valid or effective against any person or party, nor may it be invoked by the issuer thereof for any purpose, unless a duplicate original or authenticated copy was filed or until a certified copy is filed in accordance with this section. However, if an agency, in disposing of a contested case, announces in its decision the adoption of a general policy applicable to such case and subsequent cases of like nature the agency may rely upon such decision in disposition of later cases.

(6) The Secretary of State shall, upon request, supply copies of rules, or orders or designated parts of rules or orders, making and collecting therefor fees prescribed by ORS 177.130. All receipts from the sale of copies shall be deposited in the State Treasury to the credit of the General Fund. [1971 c.734 §5]

**183.360 Publication of rules and orders; judicial notice; citation.** (1) The Secretary of State shall compile, index and publish all rules adopted by each agency pursuant to ORS 183.330 and 183.340 or filed with him pursuant to law prior to September 9, 1971 or pursuant to ORS 183.355 and remaining in effect. Compilations shall be supplemented or revised as often as necessary and at least once every two years. Such compilations may be adopted by agencies as a code of regulations, superseding all previous rules of such agency. The Secretary of State may make such compilations of other material published in the bulletin as he deems desirable.

(2) The Secretary of State shall publish at monthly intervals a bulletin in which is set forth the text of all rules and executive orders filed since the preceding issue. The Secretary of State may, in his discretion, publish in the bulletin any other administrative or executive document of public interest.

(3) The Secretary of State may, in his discretion, omit from the bulletin or the compilation rules or executive orders the publication of which would be unduly cumbersome or expensive if the rule or executive order in printed or processed form is made available on application to the adopting agency, and if

the bulletin or compilation contains a notice stating the general subject matter of the omitted rule and stating how a copy thereof may be obtained. Such notice shall constitute publication for the purposes of subsection (2) of ORS 183.355.

(4) Courts shall take judicial notice of rules and executive orders filed with the Secretary of State and published pursuant to this section. Material so published may be cited as OAR, followed by the chapter and section numbers designated in the publication.

[1957 c.717 §4 (1), (2), (3); 1961 c.464 §1; 1971 c.734 §7]

**183.370 Distribution of published rules.**

The Secretary of State shall forward free of charge one copy of the bulletins and compilations to each district attorney and county clerk. The county clerk's copy shall be maintained in the county law library, or if the county has no law library, in his office available for inspection by the public. In addition, bulletins and compilations may be distributed by the Secretary of State free of charge as provided for the distribution of legislative materials referred to in ORS 171.225. Further distribution of the bulletins or compilations shall be made as directed by the Department of General Services. Other copies of the bulletins and compilations shall be distributed by the Secretary of State at a cost determined in the manner provided in ORS 2.160 for the distribution of copies of Supreme Court Reports. Any agency may compile and publish its rules or all or part of its rules for purpose of distribution outside of the agency only after it proves to the satisfaction of the Department of General Services that agency publication is necessary in addition to the publications required to be made by the Secretary of State under ORS 183.360.

[1957 c.717 §4 (4); 1959 c.260 §1; 1969 c.174 §4]

**183.380** [1957 c.717 §4 (5); repealed by 1971 c.734 §21]

**183.390 Petitions requesting adoption of rules.** An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. Not later than 30 days after the date of submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with ORS 183.335.

[1957 c.717 §5; 1971 c.734 §8]

**183.400 Judicial determination of validity of rule.** (1) The validity of any rule may be determined upon a petition for a declaratory judgment thereon filed as provided by ORS chapter 28 if the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the rights, privileges or substantial interests of the petitioner. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question, but not when the petitioner is a party to an order or a contested case in which the validity of the rule may be determined by a court.

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

(3) The court shall declare the rule invalid only if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rulemaking procedures.

[1957 c.717 §6; 1971 c.734 §9]

**183.410 Agency determination of applicability of rule or statute to petitioner; effect; judicial review.** On petition of any interested person, any agency may in its discretion issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it. A declaratory ruling is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. However, the agency may, where the ruling is adverse to the petitioner, review the ruling and alter it if requested by the petitioner. Binding rulings provided by this section are subject to review in the circuit court in the manner provided in ORS 183.480 for the review of orders in contested cases. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. The petitioner shall have the right to submit briefs and present oral argument at any declaratory ruling proceeding held pursuant to this section.

[1957 c.717 §7; 1971 c.734 §10]

**183.415 Notice, hearing and record in contested cases.** (1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice, served personally or by registered or certified mail.

(2) The notice shall include:

(a) A statement of the party's right to hearing, or a statement of the time and place of the hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved; and

(d) A short and plain statement of the matters asserted or charged.

(3) Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.

(4) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

(5) An order adverse to a party may be issued upon default only upon prima facie case made on the record of the agency. When an order is effective only if a request for hearing is not made by the party, the record may be made at the time of issuance of the order, and if the order is based only on material included in the application or other submissions of the party, the agency may so certify and so notify the party, and such material shall constitute the evidentiary record of the proceeding if hearing is not requested.

(6) Testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(7) The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) Evidence received or considered.

(c) Stipulations.

(d) A statement of matters officially noticed.

(e) Questions and offers of proof, objections and rulings thereon.

(f) Proposed findings and exceptions.

(g) Any proposed, intermediate or final order.

(8) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The record need not be transcribed unless requested for purposes of

rehearing or court review. The agency may charge the party requesting transcription the cost of a copy of transcription, unless the party files an appropriate affidavit of indigency. However, upon petition, a court having jurisdiction to review under ORS 183.480 may reduce or eliminate the charge upon finding that it is equitable to do so, or that matters of general interest would be determined by review of the order of the agency.

[1971 c.734 §13]

**183.420** [1957 c.717 §8 (1); repealed by 1971 c.734 §21]

**183.425 Depositions or subpoena of material witness.** On petition of any party to a contested case, the agency may order that the testimony of any material witness may be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of his testimony, a showing that the witness will be unable or cannot be compelled to attend, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this state and is unwilling to appear, the agency may issue a subpoena as provided in ORS 183.440, requiring his appearance before such officer.

[1971 c.734 §14]

**183.430 Hearing on refusal to renew license; exceptions.** (1) In the case of any license which must be periodically renewed, where the licensee has made timely application for renewal in accordance with the rules of the agency, such license shall not be deemed to expire, despite any stated expiration date thereon, until the agency concerned has issued a formal order of grant or denial of such renewal. In case an agency proposes to refuse to renew such license, upon demand of the licensee, the agency must grant hearing as provided by ORS 183.310 to 183.500 before issuance of order of refusal to renew. This subsection does not apply to any emergency or temporary permit or license.

(2) In any case where the agency finds a serious danger to the public health or safety and sets forth specific reasons for such findings, the agency may suspend or refuse to renew a license without hearing, but if the licensee demands a hearing within 90 days after the date of notice to the licensee of such suspension or refusal to renew, then a hearing

must be granted to the licensee as soon as practicable after such demand, and the agency shall issue an order pursuant to such hearing as required by ORS 183.310 to 183.500 confirming, altering or revoking its earlier order. Such a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to, a citation for violation which is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee. [1957 c.717 §8 (3), (4); 1965 c.212 §1; 1971 c.734 §11]

**183.440 Subpenas in contested cases.**

(1) The agency shall issue subpoenas to any party to a contested case upon request on good cause being shown and, to the extent required by agency rule, upon a statement or showing of general relevance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the agency, shall receive fees and mileage as prescribed by law for witnesses in civil actions.

(2) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which he may be lawfully interrogated, the judge of the circuit court of any county, on the application of the agency or of a designated representative of the agency or of the party requesting the issuance of the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

[1957 c.717 §8 (2); 1971 c.734 §12]

**183.450 Evidence in contested cases.** In contested cases:

(1) The rules of evidence as applied in equity cases in the circuit courts of this state shall be followed. Every agency shall provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence, but erroneous admission of evidence shall not preclude agency action on the record unless shown to have substantially prejudiced the rights of a party. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. When a hearing will be expedited, any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in subsection (4) of this section

no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(3) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence. Participants permitted to intervene by the agency shall have such rights as determined by the agency by rule or otherwise.

(4) Agencies may take notice of judicially cognizable facts, and they may take notice of general, technical or scientific facts within their specialized knowledge. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of the material so noticed and they shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented to them.

(5) No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence.

(6) Agencies may, at their discretion, be represented at hearings by the Attorney General.

[1957 c.717 §9; 1971 c.734 §15]

**183.460 Examination of evidence by agency in contested cases.** Whenever in a contested case a majority of the officials of the agency who are to render the final order have not heard the case or considered the record, the order, if adverse to a party, but not including the agency itself, shall not be made until a proposed order, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, who shall in such case personally consider the whole record or such portions thereof as may be cited by the parties.

[1957 c.717 §10; 1971 c.734 §16]

**183.470 Orders in contested cases.** Every order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record, may be accompanied by an opinion, and a final order shall be accompanied by findings of fact

and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the agency's order. Parties to the proceeding shall be notified of a final order by delivering or mailing a copy of the order or accompanying findings and conclusions to each party or, if applicable, his attorney of record.

[1957 c.717 §11; 1971 c.734 §17]

**183.480 Judicial review of contested cases.** (1) (a) Any person adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final order, whether such order is affirmative or negative in form, under ORS 183.480 to 183.500. A petition for rehearing or reconsideration need not be filed as a condition of judicial review unless specifically otherwise provided by statute or agency rule.

(b) Judicial review of final orders of agencies shall be solely as provided by ORS 183.480 to 183.500.

(c) Except as provided in ORS 183.400, no action or suit shall be maintained as to the validity of any agency order except a final order as provided in ORS 183.480 to 183.500 or except upon showing that the agency is proceeding without probable cause, or that the party will suffer substantial and irreparable harm if interlocutory relief is not granted.

(d) Judicial review of orders issued pursuant to ORS 482.550 shall be as provided by ORS 482.560.

(2) Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals, and the jurisdiction for judicial review of orders other than contested cases is conferred upon the Circuit Court for Marion County and upon the circuit court for the county in which the petitioner resides or has his principal business office. Proceedings for review shall be instituted by filing a petition in the case of contested cases in the Court of Appeals, and in the case of other orders at the election of the petitioner in the Circuit Court for Marion County, the circuit court for the county in which the petitioner resides, or the circuit court for the county in which the petitioner has his principal business office. The petition shall be filed within 60 days only following the date the order is served, or if a petition for reconsideration or rehearing has been filed, then within 60 days only following the date the order denying such petition is

served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such case petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470. The petition shall state the nature of the petitioner's interest, the facts showing how the petitioner is adversely affected or aggrieved by the agency order, and the ground or grounds upon which the petitioner contends the order should be reversed or remanded. True copies of the petition shall be served by registered or certified mail upon the agency and all other parties of record in the agency proceeding. No responsive pleading shall be required of the agency. The court, in its discretion, may permit other interested persons to intervene. However, this section does not authorize the court to grant any privilege, license, permit or right to such intervening parties where agency action is required by law for such grant.

(3) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so, or the reviewing court may order a stay upon the giving of a bond or other undertaking or upon such other terms as it deems proper. All proceedings for review shall be given precedence on the docket over all other civil cases except those given equal status by statute. Any bond or other undertaking executed pursuant to this subsection shall be in favor of the State of Oregon for its benefit and for the benefit of whom it may concern and may be enforced by the agency or any other persons concerned in an appropriate proceeding as their interests may appear.

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

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

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

(6) Review of orders other than a contested case shall be conducted by the court without a jury as a suit in equity. Review of a contested case shall be confined to the record, the court shall not substitute its judgment for that of the agency as to any issue of fact, and no additional evidence shall be received, except that in the case of disputed allegations of irregularities in procedure before the agency not shown in the record which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a Master appointed by the court to take evidence and make findings of fact upon them.

(7) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure shall not

be cause for reversal or remand unless the court shall find that substantial rights of the petitioner were prejudiced thereby and defects in the content of the notice required by ORS 183.415 not asserted at or prior to the commencement of the hearing before the agency shall not be cause for reversal or remand; or

(b) The statute, rule or order to be unconstitutional; or

(c) The rule which the order enforces or upon which the order is based or dependent, is invalid under the provisions of subsection (3) of ORS 183.400; or

(d) On review of a contested case, the order is not supported by reliable, probative and substantial evidence in the whole record; or

(e) On review of orders in other than contested cases, the facts do not support the order.

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

[1957 c.717 §12; 1963 c.449 §1; 1971 c.734 §18]

**183.490 Agency may be compelled to act.** The court may, upon petition as described in ORS 183.480, compel an agency to act where it has unlawfully refused to act, or unreasonably delayed action.

[1957 c.717 §13]

**183.500 Appeals.** Any party to the proceedings before the circuit court may appeal from the decree of that court to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals from the circuit court in suits in equity.

[1957 c.717 §14; 1969 c.198 §76]

**183.510** [1957 c.717 §16; repealed by 1971 c.734 §21]

#### CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,  
on December 1, 1971.

Robert W. Lundy  
Legislative Counsel

