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# DRAFT

## JUDICIAL REVIEW PROCEDURES ACT

October 5, 2000

**SECTION 1. Purpose and scope.** Sections 1 to 23 of this 2001 Act may be cited as the Judicial Review Procedures Act. The purpose of the Judicial Review Procedures Act is to provide the people of the State of Oregon, the government units of the State of Oregon and the courts of the State of Oregon with consistent and comprehensive procedures governing judicial review of government actions. The Judicial Review Procedures Act addresses judicial procedures only. The Judicial Review Procedures Act does not alter the range of government actions subject to legal challenge or require any new procedures by government units. The Judicial Review Procedures Act does not impose or imply any requirement that government actions be based on facts, formal findings or factual records not required by other law.

**SECTION 2. Definitions.** As used in sections 1 to 23 of this 2001 Act:

(1) <<Administrative act>> means:

(a) A final adjudicatory decision of a government unit;

(b) The failure of a government unit to perform an action when that action is required by law; and

(c) Any other government action that is not an enactment.

(2) <<Enactment>> means an official written statement of a government unit that is of general effect, including but not limited to a statute, rule, charter, ordinance or resolution.

<<Enactment>> does not include any official written statement of a government unit that:

(a) Is not legally binding on persons other than the person or group of persons named in the statement; or

(b) Does not directly apply to facts or circumstances other than those specific facts or circumstances addressed in the statement.

(3) <<Final government action>> means a government action that constitutes or reflects the actual performance or nonperformance of an act by the government unit. <<Final government action>> does not include any decision or statement by a government unit that:

(a) Is issued before a government unit takes final action; or

(b) Does not preclude further consideration of the matter addressed in the preliminary decision or statement.

(4) <<Government action>> means the performance of a discretionary or nondiscretionary act, the failure to perform a nondiscretionary act, or the failure to act when some act is legally required. <<Government action>> must be either an enactment or an administrative act.

(5) <<Government unit>> means any entity or individual with authority to act for the state, a county, a city, a district or a political subdivision thereof, including agencies, departments, divisions, bureaus, boards, commissions, councils, intergovernmental entities, municipal corporations and public corporations.

(6) <<Judicial review proceeding>> means a proceeding commenced by the filing of a notice of appeal, in the circuit court or the Court of Appeals, in the manner provided by section 4 of this 2001 Act.

1 (7) <<Law>> means a constitution or an enactment. <<Law>> includes the United  
2 States Constitution and all federal statutes and regulations.

3 (8) <<Party on appeal>> means a person that files a notice of appeal under section 4  
4 of this 2001 Act and any person allowed by the court to intervene in a judicial review  
5 proceeding.

6 (9) <<Person>> means an individual, partnership, corporation, association, public or  
7 private organization or government unit.

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9 **SECTION 3. Judicial review of government actions; exclusivity; exceptions.** (1)

10 Except as otherwise provided in this section, sections 1 to 23 of this 2001 Act establish the  
11 exclusive means of judicial review of all government actions.

12 (2) Except as otherwise provided in sections 1 to 23 of this 2001 Act, judicial review  
13 proceedings are governed by the Oregon Rules of Civil Procedure and the Oregon Rules of  
14 Appellate Procedure.

15 (3) A federal statute or regulation that provides for, or requires, a procedure or  
16 standard of review that differs materially from a procedure or standard of review provided  
17 under sections 1 to 23 of this 2001 Act shall govern judicial review of a government action if:

18 (a) The federal statute or regulation by its terms applies to the government action; or

19 (b) The eligibility of a government unit to receive federal funds is dependent upon the  
20 availability of judicial review under the procedures or standard of review provided by the  
21 federal statute or regulation.

22 (4) If a statute or constitution provides for mandatory direct review in the Supreme  
23 Court of a constitutional provision, statute or other government action, the provisions of the  
24 law establishing the jurisdiction of the court and the Oregon Rules of Appellate Procedure  
25 govern the rules and procedures for such proceedings.

26 (5) Sections 1 to 23 of this 2001 Act do not apply to judicial review of the following  
27 government actions:

28 (a) Any government action taken in the course of a judicial proceeding to the extent  
29 the action would be reviewable in or on appeal from that proceeding.

30 (b) Any government action to the extent that the action gives rise to a claim against  
31 the government unit based on contract, or to the extent that the action gives rise to a claim  
32 against the government unit by a person who has entered into a contract with the  
33 government unit based on the manner in which the government unit administers the contract.

34 (c) Any government action to the extent that the action gives rise to a tort claim under  
35 ORS 30.260 to 30.300.

36 (d) Any government action to the extent the action is subject to review by the Workers'  
37 Compensation Board.

38 (e) Any government action to the extent the action is subject to review by the Land  
39 Use Board of Appeals.

40 (f) Any government action to the extent the action is subject to review by the  
41 Employment Relations Board, except that rules and orders of the board shall be reviewed as  
42 provided by sections 1 to 23 of this 2001 Act.

43 (g) Any government action to the extent the action is subject to review by the  
44 Employment Appeals Board, except as provided in ORS 657.282 and 657.684.

45 (h) Any government action to the extent the action is subject to binding arbitration  
46 under ORS 243.650 to 243.782.

- 1 (i) Any government action to the extent the action is within the sole and exclusive  
2 jurisdiction of the Oregon Tax Court.
- 3 (j) Any government action to the extent the action is subject to judicial review under  
4 the provisions of ORS 33.720.
- 5 (k) Any government action to the extent the action is an order of the State Board of  
6 Parole and Post-Prison Supervision that is subject to review under ORS 144.335.
- 7 (L) Any government action to the extent the action is subject to review under ORS  
8 250.085, 250.195, 250.296, 251.235, 255.155 or 258.055.
- 9 (m) Any government action to the extent the action is subject to review under ORS  
10 30.210 to 30.250.
- 11 (n) Any government action to the extent the action is reviewable by a writ of habeas  
12 corpus under ORS 34.310 to 34.730.
- 13 (o) Any government action to the extent the action is subject to review under ORS  
14 chapter 279, or to the extent the government action relates to awarding or executing a  
15 contract for professional, technical or expert services.
- 16 (p) Any government action to the extent the action is subject to review under ORS  
17 192.410 to 192.505.
- 18 (q) Any government action relating to suspension of driving privileges to the extent the  
19 action is subject to review under ORS 813.410.
- 20 (r) Any government action under the General Condemnation Procedure Act to the  
21 extent the action is subject to review under ORS chapter 35.
- 22 (s) Any government action relating to attorney discipline to the extent the government  
23 action is subject to review under ORS 9.536.
- 24 (t) Any government action relating to forfeiture to the extent the action is subject to  
25 review under the provisions of ORS chapter 475A.
- 26 (u) Any government action relating to firearms to the extent the action is subject to  
27 review under the provisions of ORS 166.274.
- 28 (v) Any government action to the extent the action relates to an individual personnel  
29 matter, including hiring, discharge, discipline and promotion, unless another law provides for  
30 review by a court.
- 31 (w) Any government action to the extent the action relates to detention or custody of a  
32 person who is charged with or convicted of a crime, or to the extent the action relates to the  
33 detention or custody of a juvenile pursuant to ORS chapter 419C, including but not limited to  
34 a decision made in connection with the operation of correctional facilities, work release,  
35 restitution centers, home detention or similar corrections program.
- 36 (x) Any government action to the extent the action relates to the conduct of litigation,  
37 including but not limited to a decision to reject a claim, to settle a claim or to assert  
38 affirmative defenses or counter-claims.
- 39 (y) Any government action to the extent the action relates to a decision by a  
40 government unit to not adopt an ordinance, unless adoption of the ordinance is required by  
41 law.
- 42 (z) Any government action to the extent the government action gives rise to a claim  
43 under ORS 659.010 to 659.110.
- 44 (aa) Any government action to the extent that the action is an order of the Department  
45 of Corrections that is addressed to or affects a person who has been committed pursuant to  
46 ORS 137.124 to the custody of the Department of Corrections, who is incarcerated in a

1 Department of Corrections facility, or who seeks to visit with an inmate incarcerated in a  
2 Department of Corrections facility.

3 (6) Sections 1 to 23 of this 2001 Act do not affect a person's ability to challenge the  
4 validity of a government action in a judicial proceeding that is initiated by a government unit,  
5 or in a judicial proceeding between private parties, if the validity of the government action is  
6 material to resolution of a claim brought by the government unit or by a private party.  
7

8 **SECTION 4. Notice of appeal.** (1) Any person that has standing under section 6 of  
9 this 2001 Act may file a notice of appeal in the manner provided by this section.

10 (2) Review of government action under sections 1 to 23 of this 2001 Act must be  
11 commenced by filing a notice of appeal with the clerk of the appropriate court within the time  
12 provided by section 5 of this 2001 Act. The notice must contain the following:

13 (a) The name, mailing address and residence or business address of the person filing  
14 the notice of appeal.

15 (b) The name of the government unit whose action is challenged and the address of  
16 the principal business office of the government unit.

17 (c) Identification of the challenged government action and the date the action was  
18 taken or should have been taken, together with a copy of the enactment, or, for an  
19 administrative act, a copy of the government unit's written action or a brief description of any  
20 action not reflected in a writing.

21 (d) A brief statement reflecting the nature of the interest of the person filing the notice  
22 of appeal.

23 (e) A brief statement of the nature of the alleged error or errors, including the legal  
24 basis for asserting that an error or errors occurred.

25 (f) If the challenged government action is an administrative act, and the action was  
26 taken after an adjudicatory proceeding in which there were parties to the proceeding other  
27 than the person filing the notice of appeal and the government unit, the names and  
28 addresses of the other parties who are identified by the government unit.

29 (3) A notice of appeal filed in either the circuit court or the Court of Appeals must be  
30 filed and served in the manner provided by ORS 19.260 for appeals to the Court of Appeals.  
31 A person shall serve a copy of the notice of appeal upon the government unit and all parties  
32 required to be identified in the notice of appeal under subsection (2)(f) of this section.

33 (4) For purposes of subsection (2) of this section:

34 (a) If the government action is an enactment, the government unit that is charged with  
35 administering or enforcing the enactment must be named as the government unit whose  
36 action is challenged under subsection (2)(b) of this section.

37 (b) If the government action is an administrative act, the government unit that took the  
38 action must be named as the government unit whose action is challenged under subsection  
39 (2)(b) of this section.

40 (5) If the person challenges the validity of a statute, the person shall also serve a copy  
41 of the notice of appeal on the Attorney General in the same manner as provided by this  
42 section for service on the government unit whose action is challenged.

43 (6) If a person challenges the validity of an ordinance or charter provision, the person  
44 must request from the city or county that adopted the ordinance or charter provision the  
45 name and address of any city attorney or county counsel employed by the city or county. If  
46 the city or county provides the name and address of a city attorney or county counsel, the

1 person filing the notice of appeal must serve a copy of the notice of appeal on the city  
2 attorney or county counsel in the same manner as provided by this section for service on the  
3 government unit whose action is challenged.

4 (7) Failure of a person to comply with the requirements of this section, except for the  
5 requirement that the notice be timely filed, is not grounds for dismissal of the proceeding  
6 unless the failure substantially prejudices the rights of an adverse party on appeal. If the  
7 notice is not timely filed, the court shall dismiss the judicial review proceeding.

8 (8) A notice of appeal may be amended at any time before the filing of a petition for  
9 review under section 14 of this 2001 Act.

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11 **SECTION 5. Time limitations on filing notice of appeal.** (1) A notice of appeal  
12 alleging that a government unit failed to follow prescribed procedures in enacting an  
13 enactment must be filed within two years after the date of enactment.

14 (2) A notice of appeal seeking judicial review of an administrative act must be filed  
15 within the following time periods:

16 (a) If the government action is expressed in writing and the action is taken in  
17 compliance with all requirements applicable to the action for notice and service, within 35  
18 days after the date when the government action becomes effective.

19 (b) If the government action is not expressed in writing but is taken at a properly  
20 noticed public meeting, within 35 days after the date of the public meeting.

21 (c) If the government action is not expressed in writing and is not taken at a properly  
22 noticed public meeting, within 35 days after the date the person knew or should have known  
23 of the government action.

24 (3) If a law establishes a time certain during which a government unit must act and the  
25 government unit fails to act within the time provided, a notice of appeal must be filed within  
26 35 days after the government unit has been given notice by certified or registered mail, return  
27 receipt requested, of the person's intent to require the government unit to comply with the  
28 law. The failure of the person to give notice pursuant to this subsection is grounds for  
29 dismissal of the review proceeding. In no event may a person file a notice of appeal more  
30 than two years after the date established by law for the government unit to act if the person  
31 seeks review of a government unit's failure to act within the time provided by law.

32 (4) If a government unit by law or otherwise provides for rehearing or reconsideration  
33 of an administrative act:

34 (a) A request for rehearing or reconsideration timely filed tolls the time for filing of a  
35 notice of appeal under subsection (2) of this section.

36 (b) The government unit has a period of 60 days to act on the request for rehearing or  
37 reconsideration. If the government unit does not act within the 60-day period, the request for  
38 rehearing or reconsideration is deemed denied on the 60th day following the date the request  
39 was filed with the government unit.

40 (c) A person must file a notice of appeal within 35 days after the date on which notice  
41 is given of the final government action on the request for rehearing or reconsideration or  
42 within 35 days after the date the request is deemed denied under paragraph (b) of this  
43 subsection.

44 (5) The time periods provided for in this section do not affect a defense based on  
45 laches if that defense is otherwise available to a government unit.  
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1           **SECTION 5A. Preliminary motion to dismiss.** (1) A government unit may file a  
2 preliminary motion to dismiss a judicial review proceeding. The motion must be filed within 21  
3 days after a notice of appeal is served on the government unit under section 5 of this 2001  
4 Act. If a motion is filed under this section, the government unit filing the motion need not  
5 transmit a record within the time required by section 13 of this 2001 Act, and the person filing  
6 the notice of appeal need not file a petition for review within the time provided by section 14  
7 of this 2001 Act. If the motion is denied:

8           (a) The government unit must transmit the record required by section 13 of this 2001  
9 Act within 28 days after the denial of the motion or within such further time as the court may  
10 allow; or

11           (b) If there is no record on appeal, the person filing the notice of appeal must file the  
12 petition for review within 28 days after the denial of the motion or within such further time as  
13 the court may allow.

14           (2) As soon as possible after a motion is filed under this section, the court shall  
15 schedule a hearing on the motion. The court shall grant a preliminary motion to dismiss filed  
16 under this section if:

17           (a) The notice of appeal is subject to dismissal for any of the grounds specified in  
18 ORCP 21; or

19           (b) The person filing the notice of appeal asserts a claim on behalf of a public interest,  
20 the person has no significant personal interest in the government action, and the court  
21 determines that the person is not able to competently represent the public interest.

22           (3) Except as provided in this section, a preliminary motion to dismiss in circuit court  
23 shall be treated as a motion to dismiss under ORCP 21. When a preliminary motion to  
24 dismiss is granted by the court under this section, the court may allow amendment of the  
25 notice of appeal in the manner provided by ORCP 25. If a motion is granted under this  
26 section and the court does not allow further amendment, or the person filing the notice of  
27 appeal declines to amend the motion, judgment shall be entered in favor of the government  
28 unit. The making of a motion under this section does not affect the ability of a government  
29 unit to make a motion to dismiss under ORCP 21 after the filing of a petition for review under  
30 section 14 of this 2001 Act.

31  
32           **SECTION 6. Standing.** (1) Any of the following persons may file a notice of appeal  
33 under section 4 of this 2001 Act:

34           (a) A party to an adjudicatory proceeding that led to the challenged government  
35 action, if the party challenges the validity of the action.

36           (b) A person that is named, or otherwise identifiable, as the person to which the  
37 challenged government action is specifically directed.

38           (c) The state or a political subdivision of the state if the challenged government action  
39 will affect the ability of the state or the political subdivision of the state to carry out its policies,  
40 responsibilities or programs.

41           (d) A person who by reason of the government action has suffered, or will suffer, an  
42 injury to a present or foreseeable financial interest, voting interest or other legally recognized  
43 interest. The interest of the person must be more than a speculative or abstract interest in the  
44 correct application or validity of the government action.

45           (e) A person entitled by law to seek review.

46           (f) An association or organization with 25 or more members if the government action

1 will injure an identifiable interest represented by the association or organization, and the  
2 association or organization has authorized the filing of the notice of appeal.

3 (2) Any association or organization may file a notice of appeal on behalf of one or  
4 more persons upon a showing that the represented person have standing under subsection  
5 (1)(d) of this section and have consented to being represented by the association or  
6 organization.

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8 **SECTION 7. Ripeness.** (1) Except as provided in this section, an adjudicatory  
9 decision of a government unit is subject to judicial review under sections 1 to 23 of this 2001  
10 Act only if the decision is a final government action.

11 (2) A person may challenge an administrative act that is not final only if the person can  
12 establish that the government unit lacks an objectively reasonable basis to proceed and that  
13 the person or the public will suffer substantial harm if interlocutory relief is not granted. If a  
14 person establishes that the government unit lacks an objectively reasonable basis to proceed  
15 and that the person will suffer substantial harm if interlocutory relief is not granted, judicial  
16 review of the government action shall be conducted pursuant to sections 1 to 23 of this 2001  
17 Act and the court may grant such relief as the court determines appropriate.

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19 **SECTION 8. Exhaustion of remedies.** (1) A person may not obtain judicial review  
20 under sections 1 to 23 of this 2001 Act before pursuing all remedies available from the  
21 government unit, except that a person need not ask a government unit to:

22 (a) Reconsider or rehear a decision made by the government unit, unless a law  
23 specifically requires the person to ask for rehearing or reconsideration as a requirement for  
24 judicial review; or

25 (b) Amend an enactment, repeal an enactment or grant an exemption from an  
26 enactment, unless a law specifically requires the person to ask for amendment, repeal or  
27 exemption from the effect of the enactment.

28 (2) The court may excuse a person from the exhaustion requirements of subsection  
29 (1) of this section if:

30 (a) The remedy available from the government unit is inadequate; or

31 (b) Pursuit of the remedy available from the government unit would result in delay that  
32 would cause irreparable harm to the person.

33 (3) If a notice of appeal of a government action is filed before a person has pursued all  
34 remedies available from the government unit as required by subsection (1) of this section, the  
35 court in which the notice of appeal is filed shall dismiss the proceeding. The dismissal shall  
36 be without prejudice to any subsequent judicial review proceeding.

37  
38 **SECTION 9. Reviewable issues.** (1) In reviewing administrative acts, the court may  
39 review an issue only if it was raised before the government unit whose action is being  
40 challenged, unless the person seeking to raise the issue did not have an opportunity to raise  
41 the issue in proceedings before the government unit.

42 (2) For purposes of subsection (1) of this section, lack of notice of the proceeding  
43 does not excuse the failure of the party on appeal to have raised an issue before the  
44 government unit unless the party on appeal was entitled to notice by law and the lack of  
45 notice affected substantial rights of the party on appeal.

46 (3) If the court believes that the decision of the court may require consideration of

1 legal issues that have not been addressed by the parties on appeal, the court shall give the  
2 parties on appeal an opportunity to address those issues.

3 (4) A person may not commence a judicial review proceeding to challenge the validity  
4 of an enactment if the person filing the notice of appeal is also a party to a separate  
5 adjudicatory proceeding at the time the notice of appeal is filed and the validity of the  
6 enactment could be challenged upon judicial review of the decision in the adjudicatory  
7 proceeding.

8  
9 **SECTION 10. Authority of the courts.** (1) The Court of Appeals shall review the  
10 following government actions:

11 (a) An order in a contested case proceeding under ORS 183.310 to 183.550;

12 (b) A rule, as defined in ORS 183.310; and

13 (c) A declaratory ruling issued under ORS 183.410.

14 (2) The circuit court shall review a government action that is not subject to review by  
15 the Court of Appeals under subsection (1) of this section. The circuit court may review the  
16 validity of a rule as defined in ORS 183.310, if it is necessary for the court's review of the  
17 challenged government action.

18 (3) Notwithstanding the provisions of subsection (2) of this section, and subject to  
19 subsection (5) of this section, the Court of Appeals may review a government action that  
20 would otherwise be reviewed in the circuit court if:

21 (a) The action is filed in the circuit court;

22 (b) The parties on appeal in the circuit court stipulate to review by the Court of  
23 Appeals;

24 (c) The circuit court, in its discretion, accepts the stipulation and transfers the case by  
25 written order to the Court of Appeals; and

26 (d) The Court of Appeals, in its discretion, accepts the order of transfer of original  
27 jurisdiction from the circuit court.

28 (4) If the requirements of subsection (3)(a), (b) and (c) of this section are met, the  
29 Court of Appeals has 30 days from receipt of the circuit court order of transfer to decide  
30 whether to accept the transfer. The Court of Appeals shall issue a written order allowing or  
31 denying the transfer. If the Court of Appeals does not act on the transfer within 30 days of  
32 receipt of the circuit court order of transfer, the transfer is considered denied by operation of  
33 law.

34 (5) The circuit court may, in its discretion, transfer original jurisdiction from the circuit  
35 court to the Court of Appeals, and the Court of Appeals may, in its discretion, accept the  
36 transfer if:

37 (a) The government action is required by law to be based exclusively upon a record;

38 (b) The validity of the challenged government action can be determined without any  
39 fact-finding or without any fact-finding beyond that provided for in section 17 of this 2001 Act;  
40 or

41 (c) The government unit, in the exercise of its discretion, has based the action  
42 exclusively on a record, the development of which included notice and opportunity for  
43 interested or affected persons to appear and be heard and the preparation of findings of fact  
44 and conclusions of law, and the law does not require further development of a record to  
45 afford judicial review of the action.

1           **SECTION 11. Transfer.** (1) If the court in which a notice of appeal is filed under  
2 section 4 of this 2001 Act does not have authority to hear the case and the case should have  
3 been filed in another court or tribunal, the court shall transfer the case to the court or tribunal  
4 authorized by law to hear the case.

5           (2)(a) The Court of Appeals shall resolve all disputes relating to which court or tribunal  
6 should hear a case. If a court or tribunal to which the case is transferred disputes that it is a  
7 court or tribunal authorized by law to hear the case, the court or tribunal shall refer the  
8 question to the Court of Appeals.

9           (b) The Court of Appeals shall determine the proper tribunal under rules adopted by  
10 that court. The rules shall provide opportunity for the parties on appeal to address the issue,  
11 but shall provide the court with the means to reach an expeditious and summary  
12 determination of the matter.

13           (c) The Court of Appeals shall direct the transfer of the case to the appropriate court or  
14 tribunal or proceed to decide the case if the Court of Appeals is the appropriate court.

15           (d) Except as provided in this subsection, a determination that a court or tribunal is the  
16 appropriate court or tribunal to decide a case is not subject to interlocutory review.

17           (3) If the notice of appeal was filed within the time allowed for filing in the court or  
18 tribunal to which the case is transferred, that court or tribunal shall not dismiss the case as  
19 not being timely filed.

20           (4) If the court in which the notice of appeal is filed, or the Court of Appeals acting  
21 under subsection (2) of this section, determines that there is no court or tribunal authorized  
22 by law to consider the case, the court shall dismiss the proceeding.

23           (5) Within 10 days after the order of the transfer is entered, the person filing the notice  
24 of appeal must pay to the court or tribunal to which the case is transferred any filing fees  
25 charged by that court or tribunal. The person filing the notice of appeal is not entitled to any  
26 refund of any filing fees paid to the court transferring the case.

27           (6) For purposes of this section, <<tribunal>> means any government unit authorized  
28 by law to review the decisions of a government unit.

29  
30           **SECTION 12. Venue.** (1) If a government action is the action of the executive, judicial  
31 or legislative departments of state government, or of a board, division, department,  
32 commission or other agency of the executive, judicial or legislative departments of state  
33 government, and the government action is subject to review by a circuit court under section  
34 10 of this 2001 Act, a notice of appeal must be filed in the Circuit Court for Marion County or  
35 in the circuit court for the county in which the person filing the notice of appeal resides or has  
36 a principal business office.

37           (2) If a government action is the action of a government unit other than the  
38 government units described in subsection (1) of this section, and the government action is  
39 subject to review by a circuit court under section 10 of this 2001 Act, a notice of appeal must  
40 be filed in the circuit court of the county where the government action was taken or has an  
41 effect.

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43           **SECTION 13. Record.** (1) Within 28 days after service of the notice of appeal, or  
44 within such further time as the court may allow, the government unit shall:

45           (a) Transmit to the court the original record or a certified copy of the record upon which  
46 the government unit based the action; or

1 (b) If there is no record, serve the person who filed the notice of appeal with written  
2 notice that a record will not be transmitted to the court.

3 (2) The government unit need not transmit to the court any large maps or documents  
4 that are difficult to duplicate until the date of trial or other hearing date established by the  
5 court.

6 (3) At the time of transmitting the record to the court under subsection (1) of this  
7 section, the government unit shall serve a copy of the record, exclusive of large maps and  
8 other documents that are difficult to duplicate, on the person that files the notice of appeal.  
9 The government unit also shall serve a copy of the record on any other party on appeal  
10 requesting a copy subject to subsection (6) of this section.

11 (4) Upon motion of a party on appeal, the court may allow the record to be corrected,  
12 shortened, summarized or reorganized. Before filing a motion, a party on appeal must  
13 attempt to resolve issues relating to the record with the government unit. The motion must  
14 reflect the steps taken to first resolve the matter with the government unit. The court shall  
15 allow the record to be corrected, shortened, summarized or reorganized upon stipulation of  
16 all parties on appeal.

17 (5) Except as provided in section 17 of this 2001 Act, the record for review of an  
18 enactment includes only the following items:

19 (a) The enactment under review.

20 (b) Copies of all documents necessary to demonstrate compliance by the government  
21 unit with applicable procedures for promulgating the enactment if the notice of appeal  
22 identifies failure to comply with procedures as an issue on appeal.

23 (c) If the legal validity of the enactment depends on the finding or existence of relevant  
24 facts, all information before the government unit at the time the government unit adopted the  
25 enactment that relates to the finding or existence of those relevant facts.

26 (6) The government unit shall provide a copy of the record to the person that files the  
27 notice of appeal at no cost, unless the person unreasonably refuses to limit the record, in  
28 which case the court may require the person to pay the copying cost for the person's copy of  
29 the record. The government unit shall provide any other party on appeal a copy of the record  
30 upon request if the party reimburses the government unit for the cost of copying.

31  
32 **SECTION 14. Petition for review.** (1) A person who has filed a notice of appeal must  
33 file a petition for review with the circuit court and serve a copy of the petition on all parties on  
34 appeal:

35 (a) Not later than 21 days after the date on which the record is filed with the court  
36 under section 13 (1)(a) of this 2001 Act; or

37 (b) If there is no record, not later than 21 days after the notice required by section 13  
38 (1)(b) of this 2001 Act is served on the person.

39 (2) Filing and service of the petition may be accomplished by mailing the petition or  
40 copy by first class mail on or before the date established by this subsection. The petition  
41 must contain all of the following:

42 (a) A statement of the facts that establish that the petitioner has standing under  
43 section 6 of this 2001 Act, that the government action is a final government action and that  
44 the petitioner has exhausted all administrative remedies as required by section 8 of this 2001  
45 Act.

46 (b) A description of the alleged errors, including citations to all substantive or

1 procedural requirements alleged to have been violated.

2 (c) A statement as to whether additional evidence needs to be taken under section 17  
3 of this 2001 Act, and if additional evidence is required, a statement of the factual issues in  
4 dispute.

5 (d) A request for relief, specifying the type and extent of relief requested.

6 (2) If the notice of appeal is filed in the Court of Appeals or the Supreme Court, no  
7 petition for review shall be filed, and the information required to be included in a petition for  
8 review under subsection (1) of this section shall be set forth in the petitioner's brief.

9 (3) If a notice of appeal is transferred to a circuit court pursuant to section 11 of this  
10 2001 Act, the petition for review shall be due within the time provided by the circuit court, but  
11 in no case shall the petition be due more than 28 days from the date of transfer.

12  
13 **SECTION 15. Stays.** (1) Any person that has standing to file a notice of appeal under  
14 section 6 of this 2001 Act may seek to stay the government action. The filing of a notice of  
15 appeal does not automatically stay the government action.

16 (2) Whether or not a notice of appeal has been filed, a person must request a stay  
17 from the government unit whose action is challenged before seeking a stay from the court.

18 (3) A government unit is authorized to consider, refuse to consider, grant or deny a  
19 request for a stay pending judicial review even though a notice of appeal has been filed.

20 (4) Neither a request to the government unit for a stay pending judicial review nor the  
21 granting of a stay by a government unit pending judicial review tolls the period for filing a  
22 notice of appeal.

23 (5) A government unit has discretion in acting on a request for a stay and in deciding  
24 what conditions, if any, to impose on the grant of a stay. The following factors are relevant to  
25 the decision on whether to grant a stay:

26 (a) Whether, and to what degree, the request for stay presents a colorable claim of  
27 error in the challenged government action.

28 (b) The nature of the harm to the person requesting the stay, to the other parties and  
29 to the public that will result from the grant or denial of a stay.

30 (6) If a government unit grants a request for a stay, the government unit may impose  
31 such conditions on the grant as the government unit considers appropriate, including a  
32 requirement of an appropriate bond or other undertaking.

33 (7) A government unit may, in its discretion and at any time, stay the government  
34 unit's own action subject to such conditions as the government unit considers appropriate.

35 (8) If a government unit acts or refuses to act on a request for a stay, or issues a stay  
36 on its own motion, the government unit must do so in writing.

37 (9) A court may consider a motion requesting a stay of government action if:

38 (a) The person that seeks the stay first has sought a stay from the government unit;

39 (b) The government unit does not grant the stay requested, imposes unreasonable  
40 conditions on the granting of the stay or does not act on the request within a reasonable time;  
41 and

42 (c) A notice of appeal has been filed that challenges either the underlying government  
43 action or the government action on the request for a stay, or both.

44 (10) The court has discretion in acting on a motion for a stay and in deciding what  
45 conditions, if any, to impose on the grant of a stay, including the requirement of an  
46 appropriate bond or other undertaking. The court shall consider the action of the government

1 unit on the request for a stay, but shall make its own findings and draw its own conclusions in  
2 making the discretionary decision on the motion for a stay. The decision shall be guided by  
3 factors set out in subsection (5) of this section.

4 (11) Notwithstanding subsection (2) of this section, a person that has sought a stay  
5 from the government unit may file a motion for a stay in the court without first seeking a stay  
6 from the government unit if the person can establish that the filing of a request for a stay with  
7 the government unit would be futile or the government unit is unable or unwilling to act on the  
8 request.

9  
10 **SECTION 16. Nature of review.** (1) In judicial review proceedings a government  
11 action is subject to review for the errors described in this section and the court shall grant the  
12 appropriate relief as provided in sections 1 to 23 of this 2001 Act.

13 (2) To determine whether a government unit failed to follow a procedure required by  
14 law, the court shall review all procedural requirements applicable to the government unit  
15 when it took the challenged action.

16 (a) If the government action is an enactment, and if the court finds that the  
17 government unit did not substantially comply with a procedure required by law, the court shall  
18 declare the enactment invalid or provide such other relief as authorized in section 19 of this  
19 2001 Act.

20 (b) If the government action is an administrative act, and if the court finds that an error  
21 in procedure or a failure to follow prescribed procedure results in prejudice to a substantial  
22 procedural or substantive right of a party on appeal, the court shall remand the matter for  
23 further government action or provide such other relief as permitted under sections 1 to 23 of  
24 this 2001 Act.

25 (3) To determine whether a government action is invalid under factual criteria set  
26 either by the law under which the government unit acts, or by another law with which the  
27 government unit must comply, the court shall first determine whether the validity of the  
28 government action legally depends upon the existence of such facts. If the validity of the  
29 government action:

30 (a) Does not legally depend upon the existence of such facts, the court shall dismiss  
31 the proceeding.

32 (b) Depends on the existence of facts supported by an evidentiary record, the court  
33 shall apply a remedy in accordance with section 19 of this 2001 Act if the court finds that the  
34 required facts or determinations are not supported by substantial evidence in the record  
35 submitted by the government unit. Substantial evidence exists when the record, viewed as a  
36 whole, would permit a reasonable person to make that finding or determination.

37 (c) Depends on the existence of facts, but no law requires that the facts be based on  
38 or supported by an evidentiary record, and no law requires a different standard for judicial  
39 review of facts, the court shall set aside or remand the action only if the record submitted by  
40 the government unit fails to show that the findings or determinations of required facts, at the  
41 time of its action, were supported by information of the type that a reasonable person would  
42 rely on in making a decision of the nature and importance of the challenged action.

43 (4) To determine whether a government action other than an enactment is unlawfully  
44 inconsistent with a prior recorded practice of a government unit, the court shall first determine  
45 whether the government unit's prior recorded practice has limited the government unit's  
46 discretion with respect to the challenged government action. If the prior recorded practice:

1 (a) Has not limited the government unit's discretion, the court shall dismiss the claim.

2 (b) Has limited the government unit's discretion, the court shall determine whether the  
3 challenged action is inconsistent with that limitation. If the action is consistent with the  
4 limitation, the court shall dismiss the case. If the action is determined to be inconsistent with  
5 the limitation, and the government unit does not provide a reason for the inconsistency that  
6 explains the departure from the limitation on discretion, the court shall remand the action to  
7 the government unit or provide such other relief as is permitted under sections 1 to 23 of this  
8 2001 Act.

9 (5) To determine whether a government unit exceeded the limits of its legal authority,  
10 the court shall review all relevant sources of authority. If the court concludes that the  
11 challenged action exceeded the legal authority of the government unit, the court shall set  
12 aside the action or remand the action to the government unit for disposition within the limits  
13 of the government unit's legal authority as determined by the court.

14 (6) To determine whether a government unit unlawfully failed to act or unreasonably  
15 delayed taking action, the court first shall determine whether the government unit has a legal  
16 duty to act. If:

17 (a) The government unit has no legal duty to act, the court shall dismiss the claim.

18 (b) The government unit has a legal duty to act, the court shall review the relevant law,  
19 any time limitations that may be imposed upon the action and the factual circumstances that  
20 may be relevant to the claim.

21 (c) The court concludes that the government unit unlawfully failed to act or  
22 unreasonably delayed taking action, then the court may order that the government unit must  
23 act within a specified time after the date of the order, or it may order any other relief provided  
24 for in section 19 of this 2001 Act.

25 (7) To determine whether a government unit erroneously interpreted an enactment,  
26 the court shall interpret the enactment. The court shall accept a government unit's  
27 interpretation of technical terms of which the government unit has special knowledge and  
28 terms in the government unit's own enactment, unless the court independently determines  
29 that the interpretation is inconsistent with the enactment. The court shall accept a  
30 government unit's interpretation of terms the government unit is empowered to interpret and  
31 apply, if the court independently determines that the government unit's interpretation is  
32 consistent with the enactment. If the court concludes that the challenged action is based  
33 upon an erroneous interpretation of an enactment and a correct interpretation compels a  
34 particular action, the court shall set aside the action or modify the challenged action in  
35 accordance with the correct interpretation. If the correct interpretation does not compel a  
36 particular action or leaves the government unit with discretion that the government unit has  
37 not exercised, the court shall remand the action for disposition in accordance with the correct  
38 interpretation.

39 (8) To determine whether a government action violates a state or federal constitutional  
40 provision, the court shall review the relevant constitutional provision. If the court concludes  
41 that the challenged action is unconstitutional, or is based upon an unconstitutional law, the  
42 court shall set aside the action or remand the proceedings to the government unit for action  
43 within constitutional limits.

44 (9) To determine whether a government action violates any other law, the court shall  
45 determine the requirements of the relevant laws and the applicability of those laws to the  
46 challenged government action. If the court concludes that the challenged government action

1 violates any applicable provision of law, the court shall set aside or modify the government  
2 action, or remand the matter to the government unit. The court may apply another remedy  
3 provided by law, and to the extent possible shall sever all parts of the government action that  
4 are illegal from those parts of the government action that are legal. This subsection does not  
5 apply to any claim of error subject to review under subsections (1) to (8) of this section.  
6

7 **SECTION 17. Conduct of proceeding.** (1) Unless otherwise required by law, a  
8 judicial review proceeding shall be conducted without a jury.

9 (2) In reviewing a government action, the court first shall determine which legal issues  
10 are in dispute, which facts, if any, are material to the disputed legal issues and which of the  
11 material facts are disputed. Except as provided in this section or by some other law, the court  
12 shall limit its review of disputed facts to the record transmitted to the court pursuant to section  
13 13 of this 2001 Act.

14 (3) The court may receive and consider evidence other than the evidence of the  
15 record transmitted under section 13 of this 2001 Act if the court determines, upon motion of a  
16 party on appeal or the government unit, that the additional evidence is necessary to resolve  
17 disputed facts that relate to any of the following:

18 (a) The court's authority under section 3 of this 2001 Act to conduct the judicial review  
19 proceeding.

20 (b) A determination of whether there has been compliance with the requirements of  
21 sections 4, 5, 6, 7, 8 and 9 of this 2001 Act.

22 (c) A determination under section 10, 11 or 12 of this 2001 Act of the proper court or  
23 tribunal to conduct the proceeding.

24 (d) A determination under section 15 (9), (10) and (11) of this 2001 Act on whether to  
25 issue a stay and whether conditions should be imposed if a stay is issued.

26 (e) A review of a claim that a government unit failed to follow a procedure required by  
27 law under section 16 (2) of this 2001 Act.

28 (f) The appropriate relief to be afforded to the prevailing party on appeal under section  
29 19 of this 2001 Act.

30 (4) The court may receive and consider evidence other than the evidence in the record  
31 transmitted under section 13 of this 2001 Act if the court determines that, under a law other  
32 than the law applied in the government action or authorizing the government action, the legal  
33 validity of the government action depends upon disputed facts. If the determination of facts  
34 under that other law is within the authority of another government unit, the court may stay the  
35 proceeding under sections 1 to 23 of this 2001 Act to the extent necessary to allow the  
36 government unit to determine the legality of the government action under the other law.

37 (5) The court may receive and consider evidence other than the evidence in the record  
38 transmitted under section 13 of this 2001 Act if the court determines, upon motion of a party  
39 on appeal, that the evidence is material and there were good and substantial reasons for the  
40 failure to present the evidence in the proceeding before the government unit.

41 (6) If the court determines that it is necessary to receive and consider evidence under  
42 subsection (5) of this section, the court shall authorize the government unit to conduct such  
43 supplemental evidentiary proceedings as the court determines necessary and appropriate to  
44 obtain the additional evidence.

45 (7) If the government unit elects in its discretion to conduct a supplemental evidentiary  
46 proceeding under this section, the government unit may reaffirm, vacate, reverse or modify

1 its action based on the new record. The government unit shall, within a time fixed by the  
2 court, file with the court the new record together with a statement by the government unit  
3 reflecting the action taken by the government unit based on the new record.

4 (8) If the government unit files a new record and statement under subsection (7) of this  
5 section, the court shall review the government action pursuant to section 16 of this 2001 Act.  
6 If the government unit has modified its action, the court shall review the modified government  
7 action.

8 (9) If the government unit declines to conduct a supplemental evidentiary proceeding  
9 under this section, or does not conduct that proceeding in the manner required by the court,  
10 the court shall proceed to take the evidence, resolve all disputed facts and review the  
11 government action pursuant to section 16 of this 2001 Act.

12 (10) The court shall retain jurisdiction of the proceeding if the government unit elects  
13 to conduct proceedings authorized by the court under subsection (6) of this section. The  
14 court shall take no final action on the merits of the case during the time that is allowed by the  
15 court to the government unit to conduct proceedings or to reconsider its action.

16 (11) If an administrative act was not based exclusively on a record, and the court  
17 determines that additional evidence beyond that submitted to the court as the record under  
18 section 13 of this 2001 Act is necessary to determine the validity of the agency action, the  
19 court shall authorize the government unit upon motion of any party on appeal to supplement  
20 the record with additional information that was before the government unit at the time of its  
21 action.

22 (12) If additional evidence is introduced under the provisions of this section,  
23 admissibility of the evidence is governed by the Oregon Evidence Code.  
24

25 **SECTION 18. Reconsideration.** (1) Upon notice to the court and all parties on  
26 appeal, the government unit may withdraw the challenged action for reconsideration at any  
27 time before the court's decision. After withdrawal and within such time as the court may  
28 allow, the government unit shall affirm, modify or reverse the challenged action.

29 (2) The court shall retain jurisdiction of the proceeding during the reconsideration  
30 provided for in subsection (1) of this section. If the government unit modifies or affirms the  
31 challenged action on reconsideration, the person that filed the notice of appeal may file an  
32 amended notice of appeal within 14 days after the date on which notice is given of the  
33 government unit's action on reconsideration. If the person that filed the notice of appeal does  
34 not file an amended notice of appeal within the 14-day period, the court shall dismiss the  
35 proceeding.

36 (3) At any time during judicial review proceedings, the government unit may vacate its  
37 action. Upon vacation of the government action, the court shall dismiss the proceeding.  
38

39 **SECTION 19. Relief.** (1) Unless the court finds the existence of an error described in  
40 section 16 of this 2001 Act, the court shall affirm the government action.

41 (2) Relief granted in judicial review proceedings may be mandatory, prohibitory or  
42 declaratory in form. The court may order relief in addition to that provided for in this section  
43 and section 16 of this 2001 Act if such relief is authorized by other law. The court shall not  
44 grant relief different from that requested by the parties on appeal or the government unit  
45 unless the court notifies the parties on appeal and the government unit that different relief  
46 may be granted and allows the parties on appeal and the government unit to be heard with

1 respect to the different relief.

2 (3) If the court sets aside or remands the government action for further proceedings,  
3 the court may order such interlocutory relief as the court finds necessary to protect and  
4 preserve the interests of the parties on appeal and the public until such further proceedings  
5 occur.

6 (4) The court may award attorney fees only as specifically provided by law. The court  
7 may award attorney fees under the provisions of ORS 20.105 upon making the findings  
8 required by that statute.

9 (5) The court may award costs to the prevailing party on appeal.

10  
11 **SECTION 20. Ancillary procedural matters.** Ancillary procedural matters, including  
12 intervention, class actions, consolidation, joinder, severance, transfer, protective orders and  
13 other relief from disclosure or other matters pertaining to privileged or confidential material,  
14 are governed, to the extent not inconsistent with sections 1 to 23 of this 2001 Act, by other  
15 applicable law.

16  
17 **SECTION 21. Disposition of action.** Judicial review proceedings may be disposed of  
18 by stipulation, settlement agreement, consent order or judgment. If all of the parties on  
19 appeal stipulate or agree to a dismissal, the court shall dismiss the proceedings in that court.

20  
21 **SECTION 22. Appeals.** A decision of a circuit court in a judicial review proceeding  
22 may be appealed as provided in ORS chapter 19 for an action at law. A decision of the Court  
23 of Appeals may be reviewed by the Supreme Court pursuant to ORS 2.520.

24  
25 **SECTION 23. Writ of prohibition and common law procedures not available.** The  
26 writ of prohibition and other judicial procedures for seeking judicial review of government  
27 actions may not be used to seek review of any government action that is subject to review  
28 under sections 1 to 23 of this 2001 Act.

29  
30 **SECTION 24. Monitoring of legislative proposals by State Court Administrator.**  
31 During each session of the Legislative Assembly, the State Court Administrator shall monitor  
32 all bills and amendments to bills that propose to exempt any category of government action  
33 from the operation of sections 1 to 23 of this 2001 Act. The State Court Administrator shall  
34 give notice to the Oregon Law Commission of the introduction of bills proposing an  
35 exemption of any government action from the operation of sections 1 to 23 of this 2001 Act,  
36 and of the submission of amendments to bills that would exempt any government action from  
37 the operation of sections 1 to 23 of this 2001 Act. The Oregon Law Commission may  
38 designate any person to appear before legislative committees considering bills or  
39 amendments subject to this section to present testimony on the proposed exemption.  
40  
41  
42