

# House Bill 2209

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## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires that agency in contested case need only give parties notice of particular sections of statutes or rules that agency claims have been violated. Allows agency to amend notice at any time as long as parties are given reasonable opportunity to respond to amendments.

## A BILL FOR AN ACT

1  
2 Relating to notice of opportunity for contested case hearing; amending ORS 183.415, 183.480,  
3 279B.425 and 279C.450.

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

5 **SECTION 1.** ORS 183.415 is amended to read:

6 183.415. (1) In a contested case, all parties shall be afforded an opportunity for hearing after  
7 reasonable notice, served personally or by registered or certified mail.

8 (2) The notice shall include:

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

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

12 (c) A reference to the particular sections of *[the]* **any** statutes *[and]* **or** rules *[involved]* **that the**  
13 **agency claims have been violated;** and

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

15 **(3) An agency may amend the notice provided under subsection (2) of this section at any**  
16 **time, as long as the parties are given a reasonable opportunity to respond to the amend-**  
17 **ments.**

18 *[(3)]* **(4)** Parties may elect to be represented by counsel and to respond and present evidence and  
19 argument on all issues involved.

20 *[(4)]* **(5)** Agencies may adopt rules of procedure governing participation in contested cases by  
21 persons appearing as limited parties.

22 *[(5)(a)]* **(6)(a)** Unless precluded by law, informal disposition may be made of any contested case  
23 by stipulation, agreed settlement, consent order or default. Informal settlement may be made in li-  
24 cense revocation proceedings by written agreement of the parties and the agency consenting to a  
25 suspension, fine or other form of intermediate sanction.

26 (b) Any informal disposition of a contested case, other than an informal disposition by default,  
27 must be in writing and signed by the party or parties to the contested case. The agency shall in-  
28 corporate that disposition into a final order. An order under this paragraph is not subject to ORS  
29 183.470. The agency shall deliver or mail a copy of the order to each party, or, if applicable, to the  
30 party's attorney of record. An order that incorporates the informal disposition is a final order in a

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.  
New sections are in **boldfaced** type.

1 contested case, but is not subject to judicial review. A party may petition the agency to set aside  
 2 a final order that incorporates the informal disposition on the ground that the informal disposition  
 3 was obtained by fraud or duress.

4 [(6)] (7) An order adverse to a party may be issued upon default only upon prima facie case  
 5 made on the record of the agency. When an order is effective only if a request for hearing is not  
 6 made by the party, the record may be made at the time of issuance of the order, and if the order  
 7 is based only on material included in the application or other submissions of the party, the agency  
 8 may so certify and so notify the party, and such material shall constitute the evidentiary record of  
 9 the proceeding if hearing is not requested.

10 [(7)] (8) At the commencement of the hearing, the officer presiding shall explain the issues in-  
 11 volved in the hearing and the matters that the parties must either prove or disprove.

12 [(8)] (9) Testimony shall be taken upon oath or affirmation of the witness from whom received.  
 13 The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

14 [(9)] (10) The officer presiding at the hearing shall place on the record a statement of the sub-  
 15 stance of any written or oral ex parte communications on a fact in issue made to the officer during  
 16 the pendency of the proceeding and notify the parties of the communication and of their right to  
 17 rebut such communications. If an ex parte communication is made to an administrative law judge  
 18 assigned from the Office of Administrative Hearings established by ORS 183.605, the administrative  
 19 law judge must comply with ORS 183.685.

20 [(10)] (11) The officer presiding at the hearing shall ensure that the record developed at the  
 21 hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly  
 22 before the presiding officer in the case.

23 [(11)] (12) The record in a contested case shall include:

- 24 (a) All pleadings, motions and intermediate rulings.
- 25 (b) Evidence received or considered.
- 26 (c) Stipulations.
- 27 (d) A statement of matters officially noticed.
- 28 (e) Questions and offers of proof, objections and rulings thereon.
- 29 (f) A statement of any ex parte communications on a fact in issue made to the officer presiding  
 30 at the hearing.
- 31 (g) Proposed findings and exceptions.
- 32 (h) Any proposed, intermediate or final order prepared by the agency or an administrative law  
 33 judge.

34 [(12)] (13) A verbatim oral, written or mechanical record shall be made of all motions, rulings  
 35 and testimony. The record need not be transcribed unless requested for purposes of rehearing or  
 36 court review. The agency may charge the party requesting transcription the cost of a copy of tran-  
 37 scription, unless the party files an appropriate affidavit of indigency. However, upon petition, a  
 38 court having jurisdiction to review under ORS 183.480 may reduce or eliminate the charge upon  
 39 finding that it is equitable to do so, or that matters of general interest would be determined by re-  
 40 view of the order of the agency.

41 **SECTION 2.** ORS 183.480 is amended to read:

42 183.480. (1) Except as provided in ORS 183.415 [(5)(b)] (6)(b), any person adversely affected or  
 43 aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final  
 44 order, whether such order is affirmative or negative in form. A petition for rehearing or reconsid-  
 45 eration need not be filed as a condition of judicial review unless specifically otherwise provided by

1 statute or agency rule.

2 (2) Judicial review of final orders of agencies shall be solely as provided by ORS 183.482,  
3 183.484, 183.490 and 183.500.

4 (3) No action or suit shall be maintained as to the validity of any agency order except a final  
5 order as provided in this section and ORS 183.482, 183.484, 183.490 and 183.500 or except upon  
6 showing that the agency is proceeding without probable cause, or that the party will suffer sub-  
7 stantial and irreparable harm if interlocutory relief is not granted.

8 (4) Judicial review of orders issued pursuant to ORS 813.410 shall be as provided by ORS  
9 813.410.

10 **SECTION 3.** ORS 279B.425 is amended to read:

11 279B.425. (1) The procedure for appeal from the denial, revocation or revision of a prequalifica-  
12 tion under ORS 279B.125, or from a debarment under ORS 279B.130, shall be in accordance with this  
13 section and is not subject to ORS chapter 183 except when specifically provided by this section.

14 (2) Upon receipt of a notice from a contracting agency of a prequalification decision under ORS  
15 279B.125 or of a decision to debar under ORS 279B.130, a prospective bidder or proposer that wishes  
16 to appeal the decision shall, within three business days after receipt of the notice, notify the con-  
17 tracting agency that the prospective bidder or proposer appeals the decision as provided in this  
18 section.

19 (3) Immediately upon receipt of the prospective bidder's or proposer's notice of appeal, the con-  
20 tracting agency shall:

21 (a) If the contracting agency is a state contracting agency, notify the Director of the Oregon  
22 Department of Administrative Services.

23 (b) If the contracting agency is a local contracting agency, notify the appropriate local contract  
24 review board.

25 (4) Upon the receipt of notice from the contracting agency under subsection (3) of this section,  
26 the director or board shall promptly notify the person appealing and the contracting agency of the  
27 time and place of the hearing. The director or board shall conduct the hearing and decide the appeal  
28 within 30 days after receiving the notice from the contracting agency. The director or board shall  
29 set forth in writing the reasons for the hearing decision.

30 (5) At the hearing the director or board shall consider de novo the notice of denial, revocation  
31 or revision of a prequalification or the notice of debarment, the standards of responsibility listed in  
32 ORS 279B.110 (2) on which the contracting agency based the denial, revocation or revision of the  
33 prequalification or the reasons listed in ORS 279B.130 (2) on which the contracting agency based the  
34 debarment, and any evidence provided by the parties. In all other respects, a hearing before the di-  
35 rector shall be conducted in the same manner as a contested case under ORS 183.415 [(3) to (6) and  
36 (9)] **(4) to (7) and (10)**, 183.425, 183.440, 183.450 and 183.452. Hearings before a board shall be con-  
37 ducted under rules of procedure adopted by the board.

38 (6) The director or board may allocate the director's or board's costs for the hearing between  
39 the person appealing and the contracting agency whose prequalification or debarment decision is  
40 being appealed. The allocation shall be based upon facts found by the director or board and stated  
41 in the final order that, in the director's or board's opinion, warrant such allocation of costs. If the  
42 final order does not allocate the costs for the hearing, the costs shall be paid as follows:

43 (a) If the decision to deny, revoke or revise a prequalification of a person as a bidder or the  
44 decision to debar a person is upheld, the costs shall be paid by the person appealing the decision.

45 (b) If the decision to deny, revoke or revise a prequalification of a person as a bidder or the

1 decision to debar a person is reversed, the costs shall be paid by the contracting agency whose  
 2 prequalification or debarment decision is the subject of the appeal.

3 (7) A decision of the director or board may be reviewed only upon a petition, filed within 15  
 4 days after the date of the decision, in the circuit court of the county in which the director or board  
 5 has its principal office. The circuit court shall reverse or modify the decision only if it finds:

6 (a) The decision was obtained through corruption, fraud or undue means;

7 (b) There was evident partiality or corruption that operated to the substantial prejudice of the  
 8 petitioner on the part of the director or board or any of the board's members; or

9 (c) There was an evident material miscalculation of figures or an evident material mistake in  
 10 the description of any person, thing or property referred to in the decision, and the miscalculation  
 11 or mistake operated to the substantial prejudice of the petitioner.

12 (8) The procedure provided in this section is the exclusive means of judicial review of the deci-  
 13 sion of the director or board. The judicial review provisions of ORS 183.480 and writs of review  
 14 and mandamus as provided in ORS chapter 34, and other legal, declaratory and injunctive remedies,  
 15 are not available.

16 (9) The circuit court may stay the letting of the contract that is the subject of the petition in  
 17 the same manner as a suit in equity. When the court determines that there has been an improper  
 18 debarment or denial, revocation or revision of a prequalification and the contract has been let, the  
 19 court may proceed to take evidence to determine the damages, if any, suffered by the petitioner and  
 20 may award such damages as the court may find as a judgment against the director or board. The  
 21 court may award costs and attorney fees to the prevailing party.

22 **SECTION 4.** ORS 279C.450 is amended to read:

23 279C.450. (1) The procedure for appeal from a disqualification or denial, revocation or revision  
 24 of a prequalification by a contracting agency shall be in accordance with this section and is not  
 25 subject to ORS chapter 183 except when specifically provided by this section.

26 (2) Promptly upon receipt of notice of appeal from a contracting agency as provided for by ORS  
 27 279C.445, the Director of the Oregon Department of Administrative Services or the local contract  
 28 review board shall notify the person appealing and the contracting agency of the time and place of  
 29 the hearing. The director or board shall conduct the hearing and decide the appeal within 30 days  
 30 after receiving the notification from the contracting agency. The director or board shall set forth  
 31 in writing the reasons for the decision.

32 (3) In the hearing the director or board shall consider de novo the notice of disqualification or  
 33 denial, revocation or revision of a prequalification, the reasons listed in ORS 279C.440 (2) on which  
 34 the contracting agency based the disqualification or the standards of responsibility listed in ORS  
 35 279C.375 (2)(b) on which the contracting agency based the denial, revocation or revision of the  
 36 prequalification and any evidence provided by the parties. In all other respects, a hearing before the  
 37 director shall be conducted in the same manner as a contested case under ORS 183.415 [(3) to (6)  
 38 and (9)] **(4) to (7) and (10)**, 183.425, 183.440, 183.450 and 183.452.

39 (4) The director may allocate the director's cost for the hearing between the person appealing  
 40 and the contracting agency whose disqualification or prequalification decision is being appealed. The  
 41 allocation shall be based upon facts found by the director and stated in the final order that, in the  
 42 director's opinion, warrant such allocation of the costs. If the final order does not allocate the di-  
 43 rector's costs for the hearing, the costs shall be paid as follows:

44 (a) If the decision to disqualify or deny, revoke or revise a prequalification of a person is upheld,  
 45 the director's costs shall be paid by the person appealing the disqualification or prequalification

1 decision.

2 (b) If the decision to disqualify or deny, revoke or revise a prequalification of a person as a  
3 bidder is reversed by the director, the director's costs shall be paid by the contracting agency whose  
4 disqualification or prequalification decision is the subject of the appeal.

5 (5) The decision of the director or board may be reviewed only upon a petition, filed within 15  
6 days after the date of the decision, in the circuit court of the county in which the director or board  
7 has its principal office. The circuit court shall reverse or modify the decision only if it finds:

8 (a) The decision was obtained through corruption, fraud or undue means.

9 (b) There was evident partiality or corruption on the part of the director or board or any of its  
10 members.

11 (c) There was an evident material miscalculation of figures or an evident material mistake in  
12 the description of any person, thing or property referred to in the decision.

13 (6) The procedure provided in this section is the exclusive means of judicial review of the deci-  
14 sion of the director or board. The judicial review provisions of ORS 183.480 and writs of review  
15 and mandamus as provided in ORS chapter 34, and other legal, declaratory and injunctive remedies,  
16 are not available.

17 (7) The circuit court may, in its discretion, stay the letting of the contract that is the subject  
18 of the petition in the same manner as a suit in equity. When the court determines that there has  
19 been an improper disqualification or denial, revocation or revision of a prequalification and the  
20 contract has been let, the court may proceed to take evidence to determine the damages, if any,  
21 suffered by the petitioner and award such damages as the court may find as a judgment against the  
22 director or board. The court may award costs and attorney fees to the prevailing party.

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