

# Enrolled Senate Bill 125

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CHAPTER .....

AN ACT

Relating to contested case hearings; creating new provisions; amending ORS 183.413 and 183.415; and declaring an emergency.

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

**SECTION 1.** ORS 183.413 is amended to read:

183.413. (1) The Legislative Assembly finds that parties to a contested case hearing have a right to be informed as to the procedures by which contested cases are heard by state agencies, their rights in hearings before state agencies, the import and effect of hearings before state agencies and their rights and remedies with respect to actions taken by state agencies. Accordingly, it is the purpose of subsections (2) and (3) of this section to set forth certain requirements of state agencies so that parties to contested case hearings shall be fully informed as to these matters when exercising their rights before state agencies.

(2) Prior to the commencement of a contested case hearing before any agency including those agencies identified in ORS 183.315, the agency shall serve personally or by mail a written notice to each party to the hearing that includes the following:

- (a) 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 statement that generally identifies the issues to be considered at the hearing.
- (d) A statement indicating that the party may be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources.
- (e) A statement that the party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues.
- (f) A statement indicating whether discovery is permitted and, if so, how discovery may be requested.
- (g) A general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence.
- (h) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties.
- (i) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the agency.

(j) Whether an attorney will represent the agency in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.

(k) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the agency, whether the person presiding at the hearing is or is not an employee, officer or other representative of the agency and whether that person has the authority to make a final independent determination.

(L) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

(m) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the agency and the hearing reopened.

(n) Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

(o) A description of the appeal process from the determination or order of the agency.

**(p) A statement that active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act and may contact the Oregon State Bar or the Oregon Military Department for more information. The statement must include the toll-free telephone numbers for the Oregon State Bar and the Oregon Military Department and the Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website.**

(3) The failure of an agency to give notice of any item specified in subsection (2) of this section does not invalidate any determination or order of the agency unless upon an appeal from or review of the determination or order a court finds that the failure affects the substantial rights of the complaining party. In the event of such a finding, the court shall remand the matter to the agency for a reopening of the hearing and shall direct the agency as to what steps it shall take to remedy the prejudice to the rights of the complaining party.

**SECTION 2. (1) An agency that, prior to the effective date of this 2013 Act, provided notice of rights under the federal Servicemembers Civil Relief Act to each party to a contested case under ORS 183.413 is not required to provide the specific information described in ORS 183.413 (2)(p) in the notice so long as the agency continues to provide notice in the same manner as it was previously provided.**

**(2) An agency that, prior to the effective date of this 2013 Act, had preprinted forms used for providing notice under ORS 183.413 (2) is not required to provide the specific information required in ORS 183.413 (2)(p) until the supply of preprinted forms has been exhausted.**

**SECTION 3.** ORS 183.415 is amended to read:

183.415. (1) The Legislative Assembly finds that persons affected by actions taken by state agencies have a right to be informed of their rights and remedies with respect to the actions.

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

(3) Notice under this section must include:

(a) A statement of the party's right to hearing, with a description of the procedure and time to request a 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;

(d) A short and plain statement of the matters asserted or charged; *[and]*

(e) A statement indicating whether and under what circumstances an order by default may be entered; **and**

(f) A statement that active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act and may contact the Oregon State Bar or the Oregon Military Department for more information. The statement must include the toll-free telephone numbers for the Oregon State Bar and the Oregon Military Department and the Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website.

**SECTION 4.** (1) An agency that, prior to the effective date of this 2013 Act, provided notice of rights under the federal Servicemembers Civil Relief Act to each party to a contested case under ORS 183.415 is not required to provide the specific information described in ORS 183.415 (2)(f) in the notice so long as the agency continues to provide notice in the same manner as it was previously provided.

(2) An agency that, prior to the effective date of this 2013 Act, had preprinted forms used for providing notice under ORS 183.415 (2) is not required to provide the specific information required in ORS 183.415 (2)(f) until the supply of preprinted forms has been exhausted.

**SECTION 5.** The amendments to ORS 183.413 and 183.415 by sections 1 and 3 of this 2013 Act apply to notices served or mailed on or after the effective date of this 2013 Act.

**SECTION 6.** This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect September 1, 2013.

Passed by Senate April 25, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 22, 2013

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

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Kate Brown, Secretary of State