

# Senate Bill 125

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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 state agency to provide notice to parties in contested case hearing describing rights that active duty servicemembers have to stay proceedings under federal law.

## A BILL FOR AN ACT

1  
2 Relating to contested case hearings; creating new provisions; and amending ORS 183.413 and  
3 183.415.

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

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

6 183.413. (1) The Legislative Assembly finds that parties to a contested case hearing have a right  
7 to be informed as to the procedures by which contested cases are heard by state agencies, their  
8 rights in hearings before state agencies, the import and effect of hearings before state agencies and  
9 their rights and remedies with respect to actions taken by state agencies. Accordingly, it is the  
10 purpose of subsections (2) and (3) of this section to set forth certain requirements of state agencies  
11 so that parties to contested case hearings shall be fully informed as to these matters when exercis-  
12 ing their rights before state agencies.

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

16 (a) The time and place of the hearing.

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

18 (c) A statement that generally identifies the issues to be considered at the hearing.

19 (d) A statement indicating that the party may be represented by counsel and that legal aid or-  
20 ganizations may be able to assist a party with limited financial resources.

21 (e) A statement that the party has the right to respond to all issues properly before the presid-  
22 ing officer and present evidence and witnesses on those issues.

23 (f) A statement indicating whether discovery is permitted and, if so, how discovery may be re-  
24 quested.

25 (g) A general description of the hearing procedure including the order of presentation of evi-  
26 dence, what kinds of evidence are admissible, whether objections may be made to the introduction  
27 of evidence and what kind of objections may be made and an explanation of the burdens of proof  
28 or burdens of going forward with the evidence.

29 (h) Whether a record will be made of the proceedings and the manner of making the record and  
30 its availability to the parties.

**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 (i) The function of the record-making with respect to the perpetuation of the testimony and ev-  
 2 idence and with respect to any appeal from the determination or order of the agency.

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

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

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

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

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

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

21 **(p) A statement of any rights that active duty servicemembers have under the federal**  
 22 **Servicemembers Civil Relief Act to stay the proceedings.**

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

29 **SECTION 2.** ORS 183.415 is amended to read:

30 183.415. (1) The Legislative Assembly finds that persons affected by actions taken by state  
 31 agencies have a right to be informed of their rights and remedies with respect to the actions.

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

34 (3) Notice under this section must include:

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

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

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

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

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

42 **(f) A statement of any rights that active duty servicemembers have under the federal**  
 43 **Servicemembers Civil Relief Act to stay the proceedings.**

44 **SECTION 3. The amendments to ORS 183.413 and 183.415 by sections 1 and 2 of this 2013**  
 45 **Act apply to notices served or mailed on or after the effective date of this 2013 Act.**

