

Enrolled
House Bill 2466

Sponsored by COMMITTEE ON JUDICIARY (at the request of Legislative Counsel)

CHAPTER

AN ACT

Relating to administrative rule review by Legislative Counsel; creating new provisions; amending ORS 183.710, 183.720, 183.722 and 183.725; and declaring an emergency.

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

SECTION 1. ORS 183.710 is amended to read:

183.710. As used in ORS 183.710 to 183.725, unless the context requires otherwise:

(1) “**Interim committee**” means [*the Legislative Counsel*] **a committee of the Legislative Assembly that is scheduled to meet when the Legislative Assembly is not in session and that has subject-matter jurisdiction over the state agency that has adopted a rule, as set forth in the subject-matter jurisdiction list developed under section 3 of this 2009 Act.**

(2) “Rule” has the meaning given **that term** in ORS 183.310.

(3) “State agency” [*has the meaning given to “agency”*] **means an agency as defined in ORS 183.310.**

SECTION 2. Section 3 of this 2009 Act is added to and made a part of ORS 183.710 to 183.725.

SECTION 3. (1) **As soon as is practicable after the end of each regular legislative session, the Legislative Counsel shall develop a list of state agencies with areas of responsibility that are primarily within the subject-matter jurisdiction of interim committees of the Legislative Assembly. The Legislative Counsel shall assign all state agencies to at least one interim committee. The Legislative Counsel may modify the list to reflect changes in interim committees. The Legislative Counsel shall distribute the list to all state agencies whenever the list is developed or modified.**

(2) **If an interim committee of one house of the Legislative Assembly has overlapping subject-matter jurisdiction with an interim committee of the other house, the Legislative Counsel may assign a state agency to either committee or to both committees. The Legislative Counsel shall strive to assign state agencies so as to ensure that the rule review workload is approximately equally distributed between the interim committees of both houses of the Legislative Assembly.**

(3) **The consideration of the written findings prepared by the Legislative Counsel on a rule by any one interim committee of either house of the Legislative Assembly satisfies the requirements of ORS 183.710 to 183.725.**

SECTION 4. ORS 183.720 is amended to read:

183.720. (1) **The Legislative Counsel may review, or shall review at the direction of the Legislative Counsel Committee, a proposed rule or an adopted rule of a state agency.**

(2) The Legislative Counsel may review an adopted rule of a state agency upon the written request of any person affected by the rule. The Legislative Counsel shall review a proposed or adopted rule of a state agency upon the written request of any member of the Legislative Assembly. The written request for review must identify the specific objection or problem with the rule.

(3) When reviewing a rule of a state agency pursuant to subsection (1) or (2) of this section, the Legislative Counsel shall:

(a) Determine whether the rule appears to be within the intent and scope of the enabling legislation purporting to authorize its adoption; and

(b) Determine whether the rule raises any constitutional issue other than described in paragraph (a) of this subsection, and if so, the nature of the issue.

(4) In making a determination under subsection (3)(a) of this section, the Legislative Counsel shall, wherever possible, follow generally accepted principles of statutory construction.

(5) The Legislative Counsel shall prepare written findings on a rule reviewed, setting forth the determinations made under subsection (3) of this section.

(6) When a review of a rule is made by the Legislative Counsel, the Legislative Counsel shall send a copy of the determinations made under subsection (3) of this section to the **appropriate interim** committee[, and] **or**, if the review was requested by a member of the Legislative Assembly or by a person affected by the rule, to the person requesting the review. If the Legislative Counsel determines that a rule is not within the intent and scope of the enabling legislation purporting to authorize the state agency's adoption of the rule, or that the rule raises a constitutional issue, the Legislative Counsel shall also send a copy of the determination to the [state] agency. The Legislative Counsel may request that the state agency respond in writing to the determinations or appear at the meeting of the **interim** committee at which the committee will consider the determinations. The **interim** committee may direct the Legislative Counsel to send a copy of the determinations to the presiding officer of a house of the Legislative Assembly, who may refer the determinations to any legislative committee concerned.

(7)(a) A member of the Legislative Assembly may request that Legislative Counsel prepare a report on a rule adopted by a state agency that the member asserts is duplicative of or conflicts with another rule. A person affected by a rule adopted by a state agency may request that Legislative Counsel prepare a report on the rule if the person asserts that the rule is duplicative of or conflicts with another rule. A request for a report must be in writing and contain copies of the two rules that are claimed to be duplicative or conflicting. The second rule may be either a rule adopted by a state agency or a rule **or regulation** adopted by a federal agency.

(b)(A) Upon receipt of [the] a written request **by a member of the Legislative Assembly**, the Legislative Counsel shall prepare a report to the **interim** committee that contains:

[(a)] (i) A copy of the request, including copies of the two rules that the [requester] **member** asserts are conflicting or duplicative; and

[(b)] (ii) Legislative Counsel's analysis of the requirements of the two rules.

(B) **Upon receipt of a written request by a person affected by a rule adopted by a state agency, the Legislative Counsel may prepare a written report to the person and each state agency concerned that contains the Legislative Counsel's analysis of the requirements of the two rules.**

(8) Upon receipt of a report under subsection (7)(b)(A) of this section, the **interim** committee may issue a determination that a rule is duplicative of or conflicts with the other cited rule.

(9) When a report on a rule is made by the Legislative Counsel **under subsection (7)(b)(A) of this section**, the Legislative Counsel shall send a copy of the report and any determinations made under subsection (8) of this section to each state agency concerned [and to the person requesting the review]. The **interim** committee may direct the Legislative Counsel to send a copy of the determinations to the presiding officer of a house of the Legislative Assembly, who may refer the determinations to any legislative committee concerned.

SECTION 5. ORS 183.722 is amended to read:

183.722. (1)(a) If the Legislative Counsel determines under ORS 183.720 (3) that a proposed or adopted rule is not within the intent and scope of the enabling legislation purporting to authorize the rule's adoption, or that the rule is not constitutional, and the Legislative Counsel has provided a copy of that determination to the state agency pursuant to 183.720 (6), the [state] agency shall either make a written response to the determination or appear at the meeting of the [Legislative Counsel] **interim** committee at which the committee will consider the determinations. The response of the state agency shall indicate if the agency intends to repeal, amend or take other action with respect to the rule.

(b) The interim committee shall consider the Legislative Counsel determination described in paragraph (a) of this subsection and any state agency response to the determination. If the interim committee adopts the Legislative Counsel determination, the Legislative Counsel shall post the determination on the Legislative Counsel website. Adopted determinations that are posted on the website shall be organized by OAR number and shall remain on the website until the earlier of the date that:

(A) The rule is modified and the Legislative Counsel determines that the modified rule is within the intent and scope of the enabling legislation;

(B) A court makes a final determination that the rule is within the intent and scope of the enabling legislation and is otherwise constitutional, all appeals of the court's determination are exhausted and the state agency notifies the Legislative Counsel of the determination; or

(C) The Legislative Assembly modifies the enabling legislation so as to bring the rule within the intent and scope of the enabling legislation, any other constitutional defect in the rule is cured and the state agency notifies the Legislative Counsel of the modification or cure.

(2) If the Legislative Counsel determines under ORS 183.720 (3) that a proposed or adopted rule is not within the intent and scope of the enabling legislation purporting to authorize the rule's adoption, or that the rule is not constitutional, and the [Legislative Counsel] **interim** committee is not satisfied with the response to those issues made by the state agency, the committee may request that one or more representatives of the [state] agency appear at a subsequent meeting of the committee along with a representative of the Oregon Department of Administrative Services for the purpose of further explaining the position of the [state] agency.

(3) If a state agency is requested under subsection (2) of this section to appear at a subsequent meeting of the **interim** committee along with a representative of the Oregon Department of Administrative Services, the [state] agency shall promptly notify the department of the request. The notification to the department must be in writing, and must include a copy of the determinations made by the Legislative Counsel and a copy of any written response made by the **state** agency to the determinations.

SECTION 6. ORS 183.725 is amended to read:

183.725. [(1)] The Legislative Counsel Committee, at any time, may review any proposed or adopted rule of a state agency, and may report its recommendations in respect to the rule to the agency.

[(2) *The committee shall report to the Legislative Assembly at each regular session on its review of state agency rules.*]

SECTION 7. (1) **Notwithstanding any other provision of law, in the case of a rule adopted by a state agency on or before December 31, 2008, for which written findings on the rule have not been considered by the Legislative Counsel Committee, the Legislative Counsel, Legislative Counsel Committee and state agency that adopted the rule are considered to have complied with the requirements of ORS 183.710 to 183.725.**

(2) The definitions in ORS 183.710 apply to this section.

SECTION 8. **This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.**

Passed by House March 12, 2009

Repassed by House April 22, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate April 16, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State