

From the Desk of
Senator Ted Ferrioli

Senate Bill 744

Sponsored by Senator KNOPP

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 agencies to estimate costs borne by businesses and industrial sectors to comply with proposed rules. Prohibits adoption of proposed rule unless estimated cost of compliance with proposed rule is offset by estimated cost reductions from other proposed rule, amendment or repeal of existing rules or modifications of existing compliance with regulatory burden placed on businesses, as specified by agency proposing rule.

A BILL FOR AN ACT

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Relating to administrative rules; amending ORS 183.335 and 183.336.

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

SECTION 1. ORS 183.335 is amended to read:

183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:

(a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(c) At least 28 days before the effective date, to persons who have requested notice pursuant to subsection (8) of this section; and

(d) Delivered only by electronic mail, at least 49 days before the effective date, to the persons specified in subsection (15) of this section.

(2)(a) The notice required by subsection (1) of this section must include:

(A) A caption of not more than 15 words that reasonably identifies the subject matter of the agency's intended action. The agency shall include the caption on each separate notice, statement, certificate or other similar document related to the intended action.

(B) An objective, simple and understandable statement summarizing the subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The agency shall include with the notice of intended action given under subsection (1) of this section:

(A) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(B) A citation of the statute or other law the rule is intended to implement;

(C) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location

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 at which those documents are available for public inspection. The list may be abbreviated if neces-
2 sary, and if so abbreviated there shall be identified the location of a complete list;

3 (E) A statement of fiscal impact identifying **businesses, industrial sectors**, state agencies,
4 units of local government and the public that may be economically affected by the adoption,
5 amendment or repeal of the rule and an estimate of that economic impact on **businesses, industrial**
6 **sectors**, state agencies, units of local government and the public. In considering the economic effect
7 of the proposed action on the public, the agency shall *[utilize available information]* **conduct an**
8 **economic analysis in accordance with ORS 183.336** to project any significant economic effect of
9 that action on businesses *[which shall]*. **The economic analysis must include a cost of compliance**
10 **effect on *[small businesses]* affected **businesses and industrial sectors and an analysis of identi-****
11 **fied offsetting savings. The economic analysis must set forth the economic effects and cost**
12 **of compliance on small businesses separately.** For an agency specified in ORS 183.530, the
13 statement of fiscal impact shall also include a housing cost impact statement as described in ORS
14 183.534;

15 (F) If an advisory committee is not appointed under the provisions of ORS 183.333, an explana-
16 tion as to why no advisory committee was used to assist the agency in drafting the rule; and

17 (G) A request for public comment on whether other options should be considered for achieving
18 the rule's substantive goals while reducing the negative economic impact of the rule on business.

19 (c) The Secretary of State may omit the information submitted under paragraph (b) of this sub-
20 section from publication in the bulletin referred to in ORS 183.360.

21 (d) When providing notice of an intended action under subsection (1)(c) of this section, the
22 agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an
23 explanation of how the person may acquire a copy of the rule. The copy of an amended rule shall
24 show all changes to the rule by striking through material to be deleted and underlining all new
25 material, or by any other method that clearly shows all new and deleted material.

26 (3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons
27 reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon
28 request received from 10 persons or from an association having not less than 10 members before the
29 earliest date that the rule could become effective after the giving of notice pursuant to subsection
30 (1) of this section. An agency holding a hearing upon a request made under this subsection shall give
31 notice of the hearing at least 21 days before the hearing to the person who has requested the
32 hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the
33 persons specified in subsection (15) of this section. The agency shall publish notice of the hearing
34 in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall
35 consider fully any written or oral submission.

36 (b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection,
37 and the rule for which the hearing is to be conducted applies only to a limited geographical area
38 within this state, or affects only a limited geographical area within this state, the hearing shall be
39 conducted within the geographical area at the place most convenient for the majority of the resi-
40 dents within the geographical area. At least 14 days before a hearing conducted under this para-
41 graph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and
42 in a newspaper of general circulation published within the geographical area that is affected by the
43 rule or to which the rule applies. If a newspaper of general circulation is not published within the
44 geographical area that is affected by the rule or to which the rule applies, the publication shall be
45 made in the newspaper of general circulation published closest to the geographical area.

1 (c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the
2 State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by inmates
3 in the proposed adoption, amendment or repeal of any rule to written submissions.

4 (d) If requested by at least five persons before the earliest date that the rule could become ef-
5 fective after the agency gives notice pursuant to subsection (1) of this section, the agency shall
6 provide a statement that identifies the objective of the rule and a statement of how the agency will
7 subsequently determine whether the rule is in fact accomplishing that objective.

8 (e) An agency that receives data or views concerning proposed rules from interested persons
9 shall maintain a record of the data or views submitted. The record shall contain:

10 (A) All written materials submitted to an agency in response to a notice of intent to adopt,
11 amend or repeal a rule.

12 (B) A recording or summary of oral submissions received at hearings held for the purpose of
13 receiving those submissions.

14 (C) Any public comment received in response to the request made under subsection (2)(b)(G) of
15 this section and the agency's response to that comment.

16 (D) Any statements provided by the agency under paragraph (d) of this subsection.

17 (4) Upon request of an interested person received before the earliest date that the rule could
18 become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall
19 postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the
20 requesting person an opportunity to submit data, views or arguments concerning the proposed
21 action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant
22 to subsection (5) of this section.

23 (5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or sus-
24 pend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds
25 practicable, if the agency prepares:

26 (a) A statement of its findings that its failure to act promptly will result in serious prejudice to
27 the public interest or the interest of the parties concerned and the specific reasons for its findings
28 of prejudice;

29 (b) A citation of the statutory or other legal authority relied upon and bearing upon the
30 promulgation of the rule;

31 (c) A statement of the need for the rule and a statement of how the rule is intended to meet the
32 need;

33 (d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by
34 the agency in considering the need for and in preparing the rule, and a statement of the location
35 at which those documents are available for public inspection; and

36 (e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS
37 183.534.

38 (6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary
39 and may be effective for a period of not longer than 180 days. The adoption of a rule under this
40 subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to
41 (4) of this section.

42 (b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary
43 period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

44 (7) Notwithstanding subsections (1) to (4) of this section, an agency may amend a rule without
45 prior notice or hearing if the amendment is solely for the purpose of:

- 1 (a) Changing the name of an agency by reason of a name change prescribed by law;
- 2 (b) Changing the name of a program, office or division within an agency as long as the change
- 3 in name does not have a substantive effect on the functions of the program, office or division;
- 4 (c) Correcting spelling;
- 5 (d) Correcting grammatical mistakes in a manner that does not alter the scope, application or
- 6 meaning of the rule;
- 7 (e) Correcting statutory or rule references; or
- 8 (f) Correcting addresses or telephone numbers referred to in the rules.

9 (8)(a) Any person may request in writing that an agency send to the person copies of the
 10 agency's notices of intended action issued under subsection (1) of this section. The person must
 11 provide an address where the person elects to receive notices. The address provided may be a postal
 12 mailing address or, if the agency provides notice by electronic mail, may be an electronic mailing
 13 address.

14 (b) A request under this subsection must indicate that the person requests one of the following:

15 (A) The person may request that the agency mail paper copies of the proposed rule and other
 16 information required by subsection (2) of this section to the postal mailing address.

17 (B) If the agency posts notices of intended action on a website, the person may request that the
 18 agency mail the information required by subsection (2)(a) of this section to the postal mailing ad-
 19 dress with a reference to the website where electronic copies of the proposed rule and other infor-
 20 mation required by subsection (2) of this section are posted.

21 (C) The person may request that the agency electronically mail the information required by
 22 subsection (2)(a) of this section to the electronic mailing address, and either provide electronic
 23 copies of the proposed rule and other information required by subsection (2) of this section or pro-
 24 vide a reference to a website where electronic copies of the proposed rule and other information
 25 required by subsection (2) of this section are posted.

26 (c) Upon receipt of any request under this subsection, the agency shall acknowledge the request,
 27 establish a mailing list and maintain a record of all mailings made pursuant to the request. Agen-
 28 cies may establish procedures for establishing the mailing lists and keeping the mailing lists current.
 29 Agencies by rule may establish fees necessary to defray the costs of mailings and maintenance of
 30 the lists.

31 (d) Members of the Legislative Assembly who receive notices under subsection (15) of this sec-
 32 tion may request that an agency furnish paper copies of the notices.

33 (9) This section does not apply to rules establishing an effective date for a previously effective
 34 rule or establishing a period during which a provision of a previously effective rule will apply.

35 (10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.155, 279A.250 to
 36 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280,
 37 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545,
 38 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and
 39 279C.800 to 279C.870 relating to public contracts and purchasing.

40 (11)(a) Except as provided in paragraph (c) of this subsection, a rule is not valid unless adopted
 41 in substantial compliance with the provisions of this section in effect on the date that the notice
 42 required under subsection (1) of this section is delivered to the Secretary of State for the purpose
 43 of publication in the bulletin referred to in ORS 183.360.

44 (b) In addition to all other requirements with which rule adoptions must comply, a rule is not
 45 valid if the rule has not been submitted to the Legislative Counsel in the manner required by ORS

1 183.715.

2 (c) A rule is not subject to judicial review or other challenge by reason of failing to comply with
3 subsection (2)(a)(A) of this section.

4 (12)(a) Notwithstanding the provisions of subsection (11) of this section, but subject to paragraph
5 (b) of this subsection, an agency may correct its failure to substantially comply with the require-
6 ments of subsections (2) and (5) of this section in adoption of a rule by an amended filing, as long
7 as the noncompliance did not substantially prejudice the interests of persons to be affected by the
8 rule.

9 (b) An agency may use an amended filing to correct a failure to include a fiscal impact state-
10 ment in a notice of intended action, as required by subsection (2)(b)(E) of this section, or to correct
11 an inaccurate fiscal impact statement, only if the agency developed the fiscal impact statement with
12 the assistance of an advisory committee or fiscal impact advisory committee appointed under ORS
13 183.333.

14 (13) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an
15 agency need not be based upon or supported by an evidentiary record.

16 (14) When an agency has established a deadline for comment on a proposed rule under the
17 provisions of subsection (3)(a) of this section, the agency may not extend that deadline for another
18 agency or person unless the extension applies equally to all interested agencies and persons. An
19 agency shall not consider any submission made by another agency after the final deadline has
20 passed.

21 (15) The notices required under subsections (1) and (3) of this section must be given by the
22 agency to the following persons:

23 (a) If the proposed adoption, amendment or repeal results from legislation that was passed
24 within two years before notice is given under subsection (1) of this section, notice shall be given to
25 the legislator who introduced the bill that subsequently was enacted into law, and to the chair or
26 cochairs of all committees that reported the bill out, except for those committees whose sole action
27 on the bill was referral to another committee.

28 (b) If the proposed adoption, amendment or repeal does not result from legislation that was
29 passed within two years before notice is given under subsection (1) of this section, notice shall be
30 given to the chair or cochairs of any interim or session committee with authority over the subject
31 matter of the rule.

32 (c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given
33 to the Speaker of the House of Representatives and to the President of the Senate who are in office
34 on the date the notice is given.

35 (16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be
36 affected by a proposed adoption, amendment or repeal, the committees receiving notice under sub-
37 section (15) of this section shall review the proposed adoption, amendment or repeal for compliance
38 with the legislation from which the proposed adoption, amendment or repeal results.

39 (b) The committees shall submit their comments on the proposed adoption, amendment or repeal
40 to the agency proposing the adoption, amendment or repeal.

41 **SECTION 2.** ORS 183.336 is amended to read:

42 183.336. (1) The statement of cost of compliance effect on *[small]* businesses **and industrial**
43 **sectors** required by ORS 183.335 (2)(b)(E) must include:

44 (a) An estimate of the number of small businesses subject to the proposed rule, *[and]* identi-
45 fication of the types of businesses and industries with small businesses **subject to the proposed rule**

1 **and a separate estimate of the cost of compliance with the proposed rule for those small**
2 **businesses** subject to the proposed rule;

3 (b) A brief description of the projected reporting, recordkeeping and other administrative activ-
4 ities required for compliance with the proposed rule, including costs of professional services;

5 (c) An identification of equipment, supplies, labor and increased administration required for
6 compliance with the proposed rule; *[and]*

7 (d) A description of the manner in which the agency proposing the rule involved *[small]* affected
8 businesses and industrial sectors in the development of the rule[.];

9 (e) An estimate of the cost of compliance with the proposed rule, including a separate
10 statement of estimated increased costs expected to be incurred by affected businesses and
11 industrial sectors upon adoption of the proposed rule, and a separate statement of estimated
12 reductions in costs expected to be incurred by affected businesses and industrial sectors;

13 (f) A list of other proposed rules, including the amendment or repeal of existing rules,
14 that are to be considered in conjunction with the rule for which the cost statement is being
15 prepared, to ensure compliance with subsection (2) of this section; and

16 (g) A list of modifications to existing burdens of regulatory compliance that are placed
17 on affected businesses and industrial sectors, including an estimate of the net cost re-
18 ductions to be derived from these modifications.

19 (2) An agency may not adopt a rule unless the estimated net cost of compliance with the
20 proposed rule is offset by estimated cost reductions of at least an equal amount from:

21 (a) Rule modifications identified in subsection (1)(f) of this section; or

22 (b) Other cost reductions from modifications in regulatory compliance burdens identified
23 in subsection (1)(g) of this section.

24 (3) If the agency relies on estimated cost reductions derived from modifications to bur-
25 dens of regulatory compliance described in subsection (1)(g) of this section to satisfy the
26 requirements of subsection (2) of this section, adoption of the proposed rule legally binds the
27 agency to also implement the modifications described in subsection (1)(g) of this section.

28 (4) The agency shall utilize sound principles of economic and fiscal analysis in making the
29 estimates required under this section.

30 *[(2) An agency shall utilize available information in complying with the requirements of this sec-*
31 *tion.]*

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