

House Bill 3286

Sponsored by Representative BUEHLER; Representative WHISNANT, 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 state agencies to report findings of mandated five-year review of administrative rules to specified interim committees of Legislative Assembly. Authorizes interim committees to make recommendations to Emergency Board or Joint Committee on Ways and Means concerning reductions in agency funding.

A BILL FOR AN ACT

1
2 Relating to administrative rule review; creating new provisions; and amending ORS 183.405 and
3 183.722.

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

5 **SECTION 1.** ORS 183.405 is amended to read:

6 183.405. (1) Not later than five years after adopting a rule, an agency shall review the rule for
7 the purpose of determining:

- 8 (a) Whether the rule has had the intended effect;
9 (b) Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
10 (c) Whether subsequent changes in the law require that the rule be repealed or amended; and
11 (d) Whether there is continued need for the rule.

12 (2) An agency shall utilize available information in complying with the requirements of sub-
13 section (1) of this section.

14 **(3) The agency shall prepare a written report of its findings and submit the report to the**
15 **interim committee to which the agency has been assigned under ORS 183.724 within six**
16 **months of the date the agency completes its review under this section.**

17 *[(3)]* **(4)** If an agency appoints an advisory committee pursuant to ORS 183.333 for consideration
18 of a rule subject to the requirements of this section, the agency shall provide the advisory committee
19 with a report on a review of the rule conducted under this section.

20 *[(4)]* **(5)** The provisions of this section do not apply to the amendment or repeal of a rule.

21 *[(5)]* **(6)** The provisions of this section do not apply to:

- 22 (a) Rules adopted to implement court orders or the settlement of civil proceedings;
23 (b) Rules that adopt federal laws or rules by reference;
24 (c) Rules adopted to implement legislatively approved fee changes; or
25 (d) Rules adopted to correct errors or omissions.

26 **SECTION 2.** ORS 183.722 is amended to read:

27 183.722. (1)(a) If the Legislative Counsel determines under ORS 183.720 (3) that a proposed or
28 adopted rule is not within the intent and scope of the enabling legislation purporting to authorize
29 the rule's adoption, or that the rule is not constitutional, and the Legislative Counsel has provided
30 a copy of that determination to the state agency pursuant to 183.720 (6), the agency shall either

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 make a written response to the determination or appear at the meeting of the interim committee at
 2 which the committee will consider the determinations. The response of the state agency shall indi-
 3 cate if the agency intends to repeal, amend or take other action with respect to the rule.

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

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

12 (B) A court makes a final determination that the rule is within the intent and scope of the en-
 13 abling legislation and is otherwise constitutional, all appeals of the court’s determination are ex-
 14 hausted and the state agency notifies the Legislative Counsel of the determination; or

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

18 **(c) If the interim committee adopts the Legislative Counsel determination described in**
 19 **paragraph (a) of this subsection, the interim committee may also make recommendations to**
 20 **the Emergency Board or the Joint Committee on Ways and Means regarding reducing cur-**
 21 **rent allocations or future appropriations to the agency.**

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

29 (3) If a state agency is requested under subsection (2) of this section to appear at a subsequent
 30 meeting of the interim committee along with a representative of the Oregon Department of Admin-
 31 istrative Services, the agency shall promptly notify the department of the request. The notification
 32 to the department must be in writing, and must include a copy of the determinations made by the
 33 Legislative Counsel and a copy of any written response made by the state agency to the determi-
 34 nations.

35 **SECTION 3. Section 4 of this 2015 Act is added to and made a part of ORS 183.710 to**
 36 **183.725.**

37 **SECTION 4. (1) Each interim committee that receives a report prepared under ORS**
 38 **183.405 shall review the report as soon as is practicable after receipt. The committee may**
 39 **request that one or more representatives of the agency appear at a meeting of the commit-**
 40 **tee along with a representative of the Oregon Department of Administrative Services for the**
 41 **purpose of explaining the findings of the agency as set forth in the report.**

42 **(2) Subsequent to the meeting described in subsection (1) of this section, the committee**
 43 **may also make recommendations to the Emergency Board or the Joint Committee on Ways**
 44 **and Means regarding reducing current allocations or future appropriations to the agency.**