

Senate Bill 191

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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**.

Creates guidance document as new form for statement of state agency's practice, policy or interpretation of law. Provides that issuance of guidance document is not subject to rulemaking procedures.

Eliminates requirement for agency to convene fiscal impact advisory committee and, upon request of any person, to provide 21 to 90 days' extension of time for public comment.

Requires agency to submit rule to Legislative Counsel within 30 days before or after filing rule with Secretary of State.

Requires that petition to determine validity of rule be filed within two years after adoption of rule.

Revises process for requesting adoption, amendment or repeal of rule.

A BILL FOR AN ACT

1
2 Relating to state agency adoption of policy; creating new provisions; and amending ORS 183.310,
3 183.333, 183.335, 183.390, 183.400, 183.715, 430.357, 442.760 and 527.765.

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

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS chapter 183.**

6 **SECTION 2. (1) An agency may issue a guidance document without following the proce-**
7 **dures set forth in ORS 183.335.**

8 **(2) An agency may use guidance documents as evidence of the agency's practices, policies**
9 **or interpretations of law.**

10 **(3) If, during the course of a contested case hearing or an action in circuit court, an**
11 **agency significantly alters a practice, policy or interpretation of law set out in a guidance**
12 **document, the parties shall be provided sufficient time and opportunity to respond to the**
13 **altered practice, policy or interpretation of law.**

14 **(4) An agency must make guidance documents readily available to the public.**

15 **SECTION 3. ORS 183.310 is amended to read:**

16 183.310. As used in this chapter:

17 (1) "Agency" means any state board, commission, department, or division thereof, or officer au-
18 thorized by law to make rules or to issue orders, except those in the legislative and judicial
19 branches.

20 (2)(a) "Contested case" means a proceeding before an agency:

21 (A) In which the individual legal rights, duties or privileges of specific parties are required by
22 statute or Constitution to be determined only after an agency hearing at which such specific parties
23 are entitled to appear and be heard;

24 (B) Where the agency has discretion to suspend or revoke a right or privilege of a person;

25 (C) For the suspension, revocation or refusal to renew or issue a license where the licensee or

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 applicant for a license demands such hearing; or

2 (D) Where the agency by rule or order provides for hearings substantially of the character re-
3 quired by ORS 183.415, 183.417, 183.425, 183.450, 183.460 and 183.470.

4 (b) "Contested case" does not include proceedings in which an agency decision rests solely on
5 the result of a test.

6 (3) "Economic effect" means the economic impact on affected businesses by and the costs of
7 compliance, if any, with a rule for businesses, including but not limited to the costs of equipment,
8 supplies, labor and administration.

9 (4) **"Final order" means final agency action expressed in writing. "Final order" does not**
10 **include any tentative or preliminary agency declaration or statement that:**

11 (a) **Precedes final agency action; or**

12 (b) **Does not preclude further agency consideration of the subject matter of the state-**
13 **ment or declaration.**

14 (5) **"Guidance document" means an interpretation of an agency's rules and enabling**
15 **statutes or a policy statement created by an agency that lacks the force of law but states**
16 **the agency's current approach to or interpretation of its rules or enabling statutes or de-**
17 **scribes the circumstances under which the agency will exercise discretionary functions.**

18 [(4)] (6) "Hearing officer" includes an administrative law judge.

19 [(5)] (7) "License" includes the whole or part of any agency permit, certificate, approval, regis-
20 tration or similar form of permission required by law to pursue any commercial activity, trade, oc-
21 cupation or profession.

22 [(6)(a)] (8) "Order" means any agency action expressed orally or in writing directed to a named
23 person or named persons, other than employees, officers or members of an agency. "Order" includes
24 any agency determination or decision issued in connection with a contested case proceeding.
25 "Order" includes:

26 [(A)] (a) Agency action under ORS chapter 657 making determination for purposes of unem-
27 ployment compensation of employees of the state;

28 [(B)] (b) Agency action under ORS chapter 240 which grants, denies, modifies, suspends or re-
29 vokes any right or privilege of an employee of the state; and

30 [(C)] (c) Agency action under ORS 468B.050 to issue a permit.

31 [(b) "*Final order*" means *final agency action expressed in writing. "Final order" does not include*
32 *any tentative or preliminary agency declaration or statement that:*]

33 [(A) *Precedes final agency action; or*]

34 [(B) *Does not preclude further agency consideration of the subject matter of the statement or dec-*
35 *laration.*]

36 [(7)] (9) "Party" means:

37 (a) Each person or agency entitled as of right to a hearing before the agency;

38 (b) Each person or agency named by the agency to be a party; or

39 (c) Any person requesting to participate before the agency as a party or in a limited party status
40 which the agency determines either has an interest in the outcome of the agency's proceeding or
41 represents a public interest in such result. The agency's determination is subject to judicial review
42 in the manner provided by ORS 183.482 after the agency has issued its final order in the pro-
43 ceedings.

44 [(8)] (10) "Person" means any individual, partnership, corporation, association, governmental
45 subdivision or public or private organization of any character other than an agency.

1 [(9)] (11) “Rule” means any agency directive, standard, regulation or statement of general ap-
 2 plicability that implements, interprets or prescribes law or policy, or describes the procedure or
 3 practice requirements of any agency. The term includes the amendment or repeal of a prior rule,
 4 but does not include:

5 (a) Unless a hearing is required by statute, internal management directives, regulations or
 6 statements which do not substantially affect the interests of the public:

7 (A) Between agencies, or their officers or their employees; or

8 (B) Within an agency, between its officers or between employees.

9 (b) Action by agencies directed to other agencies or other units of government which do not
 10 substantially affect the interests of the public.

11 (c) Declaratory rulings issued pursuant to ORS 183.410 or 305.105.

12 (d) Intra-agency memoranda.

13 (e) Executive orders of the Governor.

14 (f) Rules of conduct for persons committed to the physical and legal custody of the Department
 15 of Corrections, the violation of which will not result in:

16 (A) Placement in segregation or isolation status in excess of seven days.

17 (B) Institutional transfer or other transfer to secure confinement status for disciplinary reasons.

18 (C) Disciplinary procedures adopted pursuant to ORS 421.180.

19 **(g) Guidance documents.**

20 [(10)] (12) “Small business” means a corporation, partnership, sole proprietorship or other legal
 21 entity formed for the purpose of making a profit, which is independently owned and operated from
 22 all other businesses and which has 50 or fewer employees.

23 **SECTION 4.** ORS 183.333 is amended to read:

24 183.333. (1) The Legislative Assembly finds and declares that it is the policy of this state that
 25 whenever possible the public be involved in the development of public policy by agencies and in the
 26 drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maxi-
 27 mum extent possible before giving notice of intent to adopt a rule. The agency may appoint an ad-
 28 visory committee that will represent the interests of persons likely to be affected by the rule, or use
 29 any other means of obtaining public views that will assist the agency in drafting the rule.

30 (2) Any agency in its discretion may develop a list of interested parties and inform those parties
 31 of any issue that may be the subject of rulemaking and invite the parties to make comments on the
 32 issue.

33 (3) If an agency appoints an advisory committee for consideration of a rule under subsection (1)
 34 of this section, the agency shall seek the committee’s recommendations on whether the rule will
 35 have a fiscal impact, what the extent of that impact will be and whether the rule will have a sig-
 36 nificant adverse impact on small businesses. If the committee indicates that the rule will have a
 37 significant adverse impact on small businesses, the agency shall seek the committee’s recommen-
 38 dations on compliance with ORS 183.540.

39 (4) An agency shall consider an advisory committee’s recommendations provided under sub-
 40 section (3) of this section in preparing the statement of fiscal impact required by ORS 183.335
 41 (2)(b)(E).

42 [(5) *If an agency does not appoint an advisory committee for consideration of a permanent rule*
 43 *under subsection (1) of this section and 10 or more persons likely to be affected by the rule object to*
 44 *the agency’s statement of fiscal impact as required by ORS 183.335 (2)(b)(E) or an association with at*
 45 *least 10 members likely to be affected by the rule objects to the statement, the agency shall appoint a*

1 *fiscal impact advisory committee to provide recommendations on whether the rule will have a fiscal*
 2 *impact and what the extent of that impact will be. An objection under this subsection must be made*
 3 *not later than 14 days after the notice required by ORS 183.335 (1) is given. If the agency determines*
 4 *that the statement does not adequately reflect the rule's fiscal impact, the agency shall extend the period*
 5 *for submission of data or views under ORS 183.335 (3)(a) by at least 20 days. The agency shall include*
 6 *any recommendations from the committee in the record maintained by the agency for the rule.]*

7 [(6) Subsection (5) of this section does not apply to any rule adopted by an agency to comply with
 8 a judgment or a settlement of a judicial proceeding.]

9 [(7)] (5) If an agency is required by law to appoint an advisory committee under this section, the
 10 agency may not appoint an officer, employee or other agent of the agency to serve as a member of
 11 the advisory committee.

12 **SECTION 5.** ORS 183.335 is amended to read:

13 183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice
 14 of its intended action:

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

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

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

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

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

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

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

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

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

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

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

37 (D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by
 38 the agency in considering the need for and in preparing the rule, and a statement of the location
 39 at which those documents are available for public inspection. The list may be abbreviated if neces-
 40 sary, and if so abbreviated there shall be identified the location of a complete list;

41 (E) A statement of fiscal impact identifying state agencies, units of local government and the
 42 public that may be economically affected by the adoption, amendment or repeal of the rule and an
 43 estimate of that economic impact on state agencies, units of local government and the public. In
 44 considering the economic effect of the proposed action on the public, the agency shall utilize avail-
 45 able information to project any significant economic effect of that action on businesses which shall

1 include a cost of compliance effect on small businesses affected. For an agency specified in ORS
2 183.530, the statement of fiscal impact shall also include a housing cost impact statement as de-
3 scribed in ORS 183.534;

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

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

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

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

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

25 (b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection,
26 and the rule for which the hearing is to be conducted applies only to a limited geographical area
27 within this state, or affects only a limited geographical area within this state, the hearing shall be
28 conducted within the geographical area at the place most convenient for the majority of the resi-
29 dents within the geographical area. At least 14 days before a hearing conducted under this para-
30 graph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and
31 in a newspaper of general circulation published within the geographical area that is affected by the
32 rule or to which the rule applies. If a newspaper of general circulation is not published within the
33 geographical area that is affected by the rule or to which the rule applies, the publication shall be
34 made in the newspaper of general circulation published closest to the geographical area.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS
26 183.534.

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

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

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

35 (a) Changing the name of an agency by reason of a name change prescribed by law;

36 (b) Changing the name of a program, office or division within an agency as long as the change
37 in name does not have a substantive effect on the functions of the program, office or division;

38 (c) Correcting spelling;

39 (d) Correcting grammatical mistakes in a manner that does not alter the scope, application or
40 meaning of the rule;

41 (e) Correcting statutory or rule references; or

42 (f) Correcting addresses or telephone numbers referred to in the rules.

43 (8)(a) Any person may request in writing that an agency send to the person copies of the
44 agency's notices of intended action issued under subsection (1) of this section. The person must
45 provide an address where the person elects to receive notices. The address provided may be a postal

1 mailing address or, if the agency provides notice by electronic mail, may be an electronic mailing
2 address.

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

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

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

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

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

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

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

24 (10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.155, 279A.250 to
25 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280,
26 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545,
27 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and
28 279C.800 to 279C.870 relating to public contracts and purchasing.

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

33 (b) In addition to all other requirements with which rule adoptions must comply, a rule is not
34 valid if the rule has not been submitted to the Legislative Counsel in the manner required by ORS
35 183.715.

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

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

43 (b) An agency may use an amended filing to correct a failure to include a fiscal impact state-
44 ment in a notice of intended action, as required by subsection (2)(b)(E) of this section, or to correct
45 an inaccurate fiscal impact statement, only if the agency developed the fiscal impact statement with

1 the assistance of an advisory committee [*or fiscal impact advisory committee*] appointed under ORS
 2 183.333.

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

5 (14) When an agency has established a deadline for comment on a proposed rule under the pro-
 6 visions of subsection (3)(a) of this section, the agency may not extend that deadline for another
 7 agency or person unless the extension applies equally to all interested agencies and persons. An
 8 agency shall not consider any submission made by another agency after the final deadline has
 9 passed.

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

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

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

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

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

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

30 **SECTION 6.** ORS 183.390 is amended to read:

31 183.390. (1) An interested person may petition an agency requesting the [*promulgation*]
 32 **adoption**, amendment or repeal of a rule. The Attorney General shall prescribe by rule the form for
 33 such petitions and the procedure for their submission, consideration and disposition. Not later than
 34 90 days after the date of submission of a petition, the agency either shall deny the petition in writ-
 35 ing or shall initiate rulemaking proceedings in accordance with ORS 183.335.

36 (2) [*If*] **Upon receipt of** a petition [*requesting the amendment or repeal of a rule is submitted to*
 37 *an agency under this section*] **described in subsection (1) of this section**, the agency shall invite
 38 public comment upon the [*rule*] **action requested in the petition**, and shall specifically request
 39 public comment on whether options exist for achieving the [*rule's*] substantive goals **of the petition**
 40 in a way that reduces the negative economic impact on businesses.

41 [*In reviewing a petition subject to subsection (2) of this section, the agency shall consider:*]

42 [*(a) The continued need for the rule;*]

43 [*(b) The nature of complaints or comments received concerning the rule from the public;*]

44 [*(c) The complexity of the rule;*]

45 [*(d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal*]

1 *regulations and, to the extent feasible, with local government regulations;]*

2 *[(e) The degree to which technology, economic conditions or other factors have changed in the*
 3 *subject area affected by the rule; and]*

4 *[(f) The statutory citation or legal basis for the rule.]*

5 **SECTION 7.** ORS 183.400 is amended to read:

6 183.400. (1) The validity of any rule may be determined upon a petition by any person to the
 7 Court of Appeals in the manner provided for review of orders in contested cases. The court shall
 8 have jurisdiction to review the validity of the rule whether or not the petitioner has first requested
 9 the agency to pass upon the validity of the rule in question, but not when the petitioner is a party
 10 to an order or a contested case in which the validity of the rule may be determined by a court.

11 (2) The validity of any applicable rule may also be determined by a court, upon review of an
 12 order in any manner provided by law or pursuant to ORS 183.480 or upon enforcement of such rule
 13 or order in the manner provided by law.

14 (3) Judicial review of a rule shall be limited to an examination of:

15 (a) The rule under review;

16 (b) The statutory provisions authorizing the rule; and

17 (c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking
 18 procedures.

19 (4) The court shall declare the rule invalid only if it finds that the rule:

20 (a) Violates constitutional provisions;

21 (b) Exceeds the statutory authority of the agency; or

22 (c) Was adopted without compliance with applicable rulemaking procedures.

23 (5) In the case of disputed allegations of irregularities in procedure which, if proved, would
 24 warrant reversal or remand, the Court of Appeals may refer the allegations to a master appointed
 25 by the court to take evidence and make findings of fact. The court's review of the master's findings
 26 of fact shall be de novo on the evidence.

27 (6) *[The court shall not declare a rule invalid solely because it was adopted without compliance*
 28 *with applicable rulemaking procedures]* **A petition may not be filed under this section** after a pe-
 29 riod of two years after the date the rule was filed in the office of the Secretary of State~~, if the~~
 30 ~~agency attempted to comply with those procedures and its failure to do so did not substantially preju-~~
 31 ~~dice the interests of the parties].~~

32 **SECTION 8.** ORS 183.715 is amended to read:

33 183.715. (1) A state agency that adopts a rule shall submit a copy of the adopted rule to the
 34 Legislative Counsel within [10] **30** days ~~[after]~~ **of the date** the agency files a certified copy of the
 35 rule in the office of the Secretary of State as provided in ORS 183.355 (1). The copy of an amended
 36 rule that is submitted to the Legislative Counsel must show all changes to the rule by striking
 37 through material to be deleted and underlining all new material, or by any other method that clearly
 38 shows all new and deleted material.

39 (2) Notwithstanding subsection (1) of this section, an agency adopting a rule incorporating pub-
 40 lished standards or a specialty code by reference is not required to file a copy of those standards
 41 with the Legislative Counsel if:

42 (a) The standards or a specialty code adopted are unusually voluminous and costly to reproduce;
 43 and

44 (b) The rule filed with the Legislative Counsel identifies the location of the standards or a spe-
 45 cialty code so incorporated and makes them available to the Legislative Counsel on the request of

1 the Legislative Counsel.

2 **SECTION 9.** ORS 430.357 is amended to read:

3 430.357. (1) The Oregon Health Authority shall adopt rules to implement ORS 430.338 to 430.380
4 and to establish minimum standards for alcohol and drug prevention and treatment programs in ac-
5 cordance with the rules, policies, priorities and standards of the Alcohol and Drug Policy Commis-
6 sion under ORS 430.242.

7 (2) All standards and guidelines adopted by the authority to implement programs authorized
8 under ORS 430.338 to 430.380 shall be adopted as rules pursuant to ORS chapter 183 regardless of
9 whether they come within the definition of rule in ORS 183.310 [(9)].

10 **SECTION 10.** ORS 442.760 is amended to read:

11 442.760. Notwithstanding **the definition of "party" in ORS 183.310 and** the provisions of ORS
12 [183.310 (7) and] 183.480, only a party to a cooperative program agreement or the Director of the
13 Oregon Health Authority shall be entitled to a contested case hearing or judicial review of an order
14 issued pursuant to ORS 442.700 to 442.760 and 646.740.

15 **SECTION 11.** ORS 527.765 is amended to read:

16 527.765. (1) The State Board of Forestry shall establish best management practices and other
17 rules applying to forest practices as necessary to insure that to the maximum extent practicable
18 nonpoint source discharges of pollutants resulting from forest operations on forestlands do not im-
19 pair the achievement and maintenance of water quality standards established by the Environmental
20 Quality Commission for the waters of the state. Such best management practices shall consist of
21 forest practices rules adopted to prevent or reduce pollution of waters of the state. Factors to be
22 considered by the board in establishing best management practices shall include, where applicable,
23 but not be limited to:

- 24 (a) Beneficial uses of waters potentially impacted;
25 (b) The effects of past forest practices on beneficial uses of water;
26 (c) Appropriate practices employed by other forest managers;
27 (d) Technical, economic and institutional feasibility; and
28 (e) Natural variations in geomorphology and hydrology.

29 (2) The board shall consult with the Environmental Quality Commission in adoption and review
30 of best management practices and other rules to address nonpoint source discharges of pollutants
31 resulting from forest operations on forestlands.

32 (3)(a) Notwithstanding **the definition of "person" in ORS 183.310 [(8)],** upon written petition for
33 rulemaking under ORS 183.390 of any interested person or agency, the board shall review the best
34 management practices adopted pursuant to this section. In addition to all other requirements of law,
35 the petition must allege with reasonable specificity that nonpoint source discharges of pollutants
36 resulting from forest operations being conducted in accordance with the best management practices
37 are a significant contributor to violations of such standards.

38 (b) Except as provided in paragraph (c) of this subsection, if the board determines that forest
39 operations being conducted in accordance with the best management practices are neither signif-
40 icantly responsible for particular water quality standards not being met nor are a significant con-
41 tributor to violations of such standards, the board shall issue an order dismissing the petition.

42 (c) If the petition for review of best management practices is made by the Environmental Quality
43 Commission, the board shall not terminate the review without the concurrence of the commission,
44 unless the board commences rulemaking in accordance with paragraph (e) of this subsection.

45 (d) If a petition for review is dismissed, upon conclusion of the review, the board shall issue an

1 order that includes findings regarding specific allegations in the petition and shall state the board's
2 reasons for any conclusions to the contrary.

3 (e) If, pursuant to review, the board determines that best management practices should be re-
4 viewed, the board shall commence rulemaking proceedings for that purpose. Rules specifying the
5 revised best management practices must be adopted not later than two years from the filing date
6 of the petition for review unless the board, with concurrence of the Environmental Quality Com-
7 mission, finds that special circumstances require additional time.

8 (f) Notwithstanding the time limitation established in paragraph (e) of this subsection, at the
9 request of the Environmental Quality Commission, the board shall take action as quickly as practi-
10 cable to prevent significant damage to beneficial uses identified by the commission while the board
11 is revising its best management practices and rules as provided for in this section.

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