

# Senate Bill 764

Sponsored by Senator FERRIOLI

## 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 agency to include comparative analysis of costs and benefits of rule in notice of proposed rulemaking. Requires agency to appoint advisory committee if association or group of 10 or more individuals objects to comparative analysis of costs and benefits stated in notice.

## A BILL FOR AN ACT

1  
2 Relating to administrative rules; amending ORS 183.333 and 183.335.

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

4 **SECTION 1.** ORS 183.335 is amended to read:

5 183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice  
6 of its intended action:

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

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

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

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

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

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

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

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

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

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

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

29 (D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by  
30 the agency in considering the need for and in preparing the rule, and a statement of the location  
31 at which those documents are available for public inspection. The list may be abbreviated if neces-

**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 sary, and if so abbreviated there shall be identified the location of a complete list;

2 (E) A statement of fiscal impact identifying state agencies, units of local government and the  
3 public that may be economically affected by the adoption, amendment or repeal of the rule and an  
4 estimate of that economic impact on state agencies, units of local government and the public. In  
5 considering the economic effect of the proposed action on the public, the agency shall utilize avail-  
6 able information to project any significant economic effect of that action on businesses which shall  
7 include a cost of compliance effect on small businesses affected. For an agency specified in ORS  
8 183.530, the statement of fiscal impact shall also include a housing cost impact statement as de-  
9 scribed in ORS 183.534;

10 (F) **A comparative analysis of the costs and benefits of the proposed rule including:**

11 (i) **A comparison of the cost to enforce the rule to the cost of enforcing other rules;**

12 (ii) **A determination of the cost of achieving the specified outcome of the rule;**

13 (iii) **A comparison of the cost of enforcing compliance with the rule to the cost of vol-**  
14 **untary compliance with the rule by individuals and businesses; and**

15 (iv) **A determination of the ability of the agency to absorb the cost of enforcing compli-**  
16 **ance with the rule if the agency's budget is reduced by 10 percent;**

17 [(F)] (G) If an advisory committee is not appointed under the provisions of ORS 183.333, an ex-  
18 planation as to why no advisory committee was used to assist the agency in drafting the rule; and

19 [(G)] (H) A request for public comment on whether other options should be considered for  
20 achieving the rule's substantive goals while reducing the negative economic impact of the rule on  
21 business.

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

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

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

39 (b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection,  
40 and the rule for which the hearing is to be conducted applies only to a limited geographical area  
41 within this state, or affects only a limited geographical area within this state, the hearing shall be  
42 conducted within the geographical area at the place most convenient for the majority of the resi-  
43 dents within the geographical area. At least 14 days before a hearing conducted under this para-  
44 graph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and  
45 in a newspaper of general circulation published within the geographical area that is affected by the

1 rule or to which the rule applies. If a newspaper of general circulation is not published within the  
2 geographical area that is affected by the rule or to which the rule applies, the publication shall be  
3 made in the newspaper of general circulation published closest to the geographical area.

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

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

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

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

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

17 (C) Any public comment received in response to the request made under subsection [(2)(b)(G)]  
18 **(2)(b)(H)** of this section and the agency's response to that comment.

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

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

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

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

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

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

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

39 (e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS  
40 183.534.

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

45 (b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary

1 period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

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

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

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

7 (c) Correcting spelling;

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

10 (e) Correcting statutory or rule references; or

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

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

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

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

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

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

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

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

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

38 (10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.155, 279A.250 to  
39 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280,  
40 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545,  
41 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and  
42 279C.800 to 279C.870 relating to public contracts and purchasing.

43 (11)(a) Except as provided in paragraph (c) of this subsection, a rule is not valid unless adopted  
44 in substantial compliance with the provisions of this section in effect on the date that the notice  
45 required under subsection (1) of this section is delivered to the Secretary of State for the purpose

1 of publication in the bulletin referred to in ORS 183.360.

2 (b) In addition to all other requirements with which rule adoptions must comply, a rule is not  
3 valid if the rule has not been submitted to the Legislative Counsel in the manner required by ORS  
4 183.715.

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

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

12 (b) An agency may use an amended filing to correct a failure to include **or to correct** a fiscal  
13 impact statement in a notice of intended action, as required by subsection (2)(b)(E) of this section,  
14 **or a comparative analysis of the costs and benefits of the rule, as required by subsection**  
15 **(2)(b)(F) of this section,** [*to correct an inaccurate fiscal impact statement,*] only if the agency devel-  
16 oped the fiscal impact statement **or comparative analysis** with the assistance of an advisory com-  
17 mittee [*or fiscal impact advisory committee*] appointed under ORS 183.333.

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

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

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

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

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

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

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

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

45 **SECTION 2.** ORS 183.333 is amended to read:

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

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

10 (3) If an agency appoints an advisory committee for consideration of a rule under subsection (1)  
11 of this section, the agency shall seek the committee's recommendations on whether the rule will  
12 have a fiscal impact, what the extent of that impact will be and whether the rule will have a sig-  
13 nificant adverse impact on small businesses. If the committee indicates that the rule will have a  
14 significant adverse impact on small businesses, the agency shall seek the committee's recommen-  
15 dations on compliance with ORS 183.540.

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

19 (5) If an agency does not appoint an advisory committee for consideration of a permanent rule  
20 under subsection (1) of this section and 10 or more persons likely to be affected by the rule object  
21 to the agency's [*statement of fiscal impact as required by*] **notice with respect to** ORS 183.335  
22 (2)(b)(E) **or (F)**, or an association with at least 10 members likely to be affected by the rule objects  
23 to [*the statement*] **those portions of the notice**, the agency shall appoint [*a fiscal impact*] **an** advi-  
24 sory committee to provide recommendations on whether the rule will have a fiscal impact and what  
25 the extent of that impact will be **or recommendations on the comparative costs and benefits**  
26 **of the rule**. An objection under this subsection must be made not later than 14 days after the no-  
27 tice required by ORS 183.335 (1) is given. If the agency determines that the [*statement*] **notice** does  
28 not adequately reflect the rule's fiscal impact **or the comparative costs and benefits of the**  
29 **rule**, the agency shall extend the period for submission of data or views under ORS 183.335 (3)(a)  
30 by at least 20 days. The agency shall include any recommendations from the committee in the record  
31 maintained by the agency for the rule.

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

34 (7) If an agency is required by law to appoint an advisory committee under this section, the  
35 agency may not appoint an officer, employee or other agent of the agency to serve as a member of  
36 the advisory committee.

37