

Senate Bill 1579

Sponsored by Senators WHITSETT, COURTNEY; Senators BAERTSCHIGER JR, BOQUIST, FERRIOLI, GIROD, HANSELL, KNOPP, OLSEN, THOMSEN, Representative NEARMAN (Pre-session filed.)

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 provide summary of legal advice regarding validity or effect of proposed rule or written order.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to legal advice provided to state agencies; creating new provisions; amending ORS 183.335;
3 and declaring an emergency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by

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

4 (E) A statement of fiscal impact identifying state agencies, units of local government and the
 5 public that may be economically affected by the adoption, amendment or repeal of the rule and an
 6 estimate of that economic impact on state agencies, units of local government and the public. In
 7 considering the economic effect of the proposed action on the public, the agency shall utilize avail-
 8 able information to project any significant economic effect of that action on businesses which shall
 9 include a cost of compliance effect on small businesses affected. For an agency specified in ORS
 10 183.530, the statement of fiscal impact shall also include a housing cost impact statement as de-
 11 scribed in ORS 183.534;

12 **(F) A summary of any legal advice received by the agency regarding the validity or effect**
 13 **of the rule;**

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

16 [(G)] (H) A request for public comment on whether other options should be considered for
 17 achieving the rule's substantive goals while reducing the negative economic impact of the rule on
 18 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)]
15 **(2)(b)(H)** of 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.161, 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 pro-
17 visions 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. Section 3 of this 2016 Act is added to and made a part of ORS chapter 183.**

42 **SECTION 3. An order expressed in writing by an agency must include a summary of any
43 legal advice received by the agency regarding the validity or effect of the order.**

44 **SECTION 4. (1) The amendments to ORS 183.335 by section 1 of this 2016 Act apply only
45 to notices of intended action given on or after the effective date of this 2016 Act.**

1 **(2) Section 3 of this 2016 Act applies only to orders issued on or after the effective date**
2 **of this 2016 Act.**

3 **SECTION 5.** **This 2016 Act being necessary for the immediate preservation of the public**
4 **peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect**
5 **on its passage.**

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