

# House Bill 2212

Sponsored by Representative VIAL (Presession 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 express or implied approval of permanent administrative rules by committees of Legislative Assembly before rules become effective. Allows limited exception for temporary rules. Prohibits rules from being in effect for longer than three years absent approval by Legislative Assembly. Applies to rules adopted, amended or repealed by state agencies on or after January 1, 2018. Authorizes Legislative Assembly to adopt measure to rescind rule.

## A BILL FOR AN ACT

1  
2 Relating to administrative rules; creating new provisions; and amending ORS 183.335.

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

4 **SECTION 1. (1) As used in this section:**

5 (a) "Agency" has the meaning given that term in ORS 183.310.

6 (b) "Permanent rule" means a rule that is adopted, amended or repealed by an agency,  
7 **other than a rule adopted, amended or suspended under ORS 183.335 (5).**

8 (c) "Rule" has the meaning given that term in ORS 183.310.

9 (2) **Before a permanent rule may be filed with the Secretary of State under ORS 183.355,**  
10 **an agency shall submit the rule, for review, to the committee of the House of Represen-**  
11 **tatives and the committee of the Senate related to the subject matter of the rule. Following**  
12 **consideration of the rule, each committee may:**

13 (a) **Take no action with respect to the rule; or**

14 (b) **Refer the rule to the Legislative Assembly for approval or disapproval or for approval**  
15 **as amended by the committee.**

16 (3) **The Legislative Assembly may disapprove a rule or amend a rule only by adoption of**  
17 **a measure in the manner provided in Article IV of the Oregon Constitution.**

18 (4) **The agency may file a permanent rule with the Secretary of State if:**

19 (a) **Both committees take no action;**

20 (b) **The Legislative Assembly does not adopt a recommendation by either committee to**  
21 **disapprove the rule; or**

22 (c) **The agency files the rule as amended by the Legislative Assembly.**

23 **SECTION 2. The amendments to ORS 183.335 by section 3 of this 2017 Act apply to rules**  
24 **in effect on and after the effective date of this 2017 Act.**

25 **SECTION 3. ORS 183.335 is amended to read:**

26 183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice  
27 of its intended action:

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

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

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

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

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

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

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

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

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

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

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

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

24 (E) A statement of fiscal impact identifying state agencies, units of local government and the  
 25 public that may be economically affected by the adoption, amendment or repeal of the rule and an  
 26 estimate of that economic impact on state agencies, units of local government and the public. In  
 27 considering the economic effect of the proposed action on the public, the agency shall utilize avail-  
 28 able information to project any significant economic effect of that action on businesses which shall  
 29 include a cost of compliance effect on small businesses affected. For an agency specified in ORS  
 30 183.530, the statement of fiscal impact shall also include a housing cost impact statement as de-  
 31 scribed in ORS 183.534;

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

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

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

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

43 (3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons  
 44 reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon  
 45 request received from 10 persons or from an association having not less than 10 members before the

1 earliest date that the rule could become effective after the giving of notice pursuant to subsection  
2 (1) of this section. An agency holding a hearing upon a request made under this subsection shall give  
3 notice of the hearing at least 21 days before the hearing to the person who has requested the  
4 hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the  
5 persons specified in subsection (15) of this section. The agency shall publish notice of the hearing  
6 in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall  
7 consider fully any written or oral submission.

8 (b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection,  
9 and the rule for which the hearing is to be conducted applies only to a limited geographical area  
10 within this state, or affects only a limited geographical area within this state, the hearing shall be  
11 conducted within the geographical area at the place most convenient for the majority of the resi-  
12 dents within the geographical area. At least 14 days before a hearing conducted under this para-  
13 graph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and  
14 in a newspaper of general circulation published within the geographical area that is affected by the  
15 rule or to which the rule applies. If a newspaper of general circulation is not published within the  
16 geographical area that is affected by the rule or to which the rule applies, the publication shall be  
17 made in the newspaper of general circulation published closest to the geographical area.

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS  
9 183.534.

10 (6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary  
11 and may be effective for a period of not longer than 180 days, **and may take effect in the absence**  
12 **of any legislative approval required under section 1 of this 2017 Act.** The adoption of a rule  
13 under this subsection does not preclude the subsequent adoption of an identical rule under sub-  
14 sections (1) to (4) of this section **for the next succeeding period of not longer than 180 days but**  
15 **does preclude the adoption of an identical or similar rule for any period thereafter, absent**  
16 **the legislative approval required under section 1 of this 2017 Act.**

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

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

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

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

24 (c) Correcting spelling;

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

27 (e) Correcting statutory or rule references; or

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

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

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

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

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

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

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

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

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

10 (10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.161, 279A.250 to  
11 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280,  
12 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545,  
13 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and  
14 279C.800 to 279C.870 relating to public contracts and purchasing.

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

19 (b) In addition to all other requirements with which rule adoptions must comply, a rule is not  
20 valid if the rule has not been submitted to the Legislative Counsel in the manner required by ORS  
21 183.715.

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

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

29 (b) An agency may use an amended filing to correct a failure to include a fiscal impact state-  
30 ment in a notice of intended action, as required by subsection (2)(b)(E) of this section, or to correct  
31 an inaccurate fiscal impact statement, only if the agency developed the fiscal impact statement with  
32 the assistance of an advisory committee or fiscal impact advisory committee appointed under ORS  
33 183.333.

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

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

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

43 (a) If the proposed adoption, amendment or repeal results from legislation that was passed  
44 within two years before notice is given under subsection (1) of this section, notice shall be given to  
45 the legislator who introduced the bill that subsequently was enacted into law, and to the chair or

1 cochairs of all committees that reported the bill out, except for those committees whose sole action  
2 on the bill was referral to another committee.

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

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

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

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

16 **(17) Unless subsection (5) or (6) of this section applies, a rule that is adopted or amended**  
17 **may not take effect until the rule receives legislative approval under section 1 of this 2017**  
18 **Act.**

19 **(18) Except as provided in subsection (6) of this section, a permanent rule adopted under**  
20 **this section is effective for a period of not longer than three years. An agency may use the**  
21 **procedure set forth in section 1 of this 2017 Act to obtain legislative approval to allow a rule**  
22 **to be in effect longer than three years.**

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