

Senate Bill 325

Sponsored by Senator OLSEN (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 agency to estimate and publish economic impact on low income households of current and proposed rules.

A BILL FOR AN ACT

1
2 Relating to the economic impact of rules on low income households; creating new provisions; and
3 amending ORS 183.310, 183.335, 430.357, 442.760 and 527.765.

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

5 **SECTION 1. (1) As used in this section, "low income household" means a household, as**
6 **defined in ORS 183.310, whose gross income is at or below 150 percent of the federal poverty**
7 **guidelines.**

8 **(2) Each agency, as defined in ORS 183.310, shall estimate the economic impact, if any,**
9 **on low income households of complying with each of the agency's adopted rules and shall**
10 **publish the findings on the agency's website no later than December 31, 2018.**

11 **(3) Rules adopted in compliance with ORS 183.335 (2)(b)(E), as amended by section 2 of**
12 **this 2017 Act, are exempt from this section.**

13 **SECTION 2. ORS 183.335 is amended to read:**

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

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

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

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

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

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

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

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

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

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 section:

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

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

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

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

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

16 **The statement must include:**

17 (i) A cost of compliance effect on:

18 (I) Small businesses affected[.]; **and**

19 **(II) Households composed of individuals whose combined gross income is less than 150**
20 **percent of the federal poverty guidelines; and**

21 (ii) For an agency specified in ORS 183.530, [*the statement of fiscal impact shall also include*] a
22 housing cost impact statement as described in ORS 183.534;

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

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

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

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

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

44 (b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection,
45 and the rule for which the hearing is to be conducted applies only to a limited geographical area

1 within this state, or affects only a limited geographical area within this state, the hearing shall be
2 conducted within the geographical area at the place most convenient for the majority of the resi-
3 dents within the geographical area. At least 14 days before a hearing conducted under this para-
4 graph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and
5 in a newspaper of general circulation published within the geographical area that is affected by the
6 rule or to which the rule applies. If a newspaper of general circulation is not published within the
7 geographical area that is affected by the rule or to which the rule applies, the publication shall be
8 made in the newspaper of general circulation published closest to the geographical area.

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS
45 183.534.

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

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

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

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

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

12 (c) Correcting spelling;

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

15 (e) Correcting statutory or rule references; or

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

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

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

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

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

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

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

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

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

43 (10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.161, 279A.250 to
44 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280,
45 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545,

1 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and
2 279C.800 to 279C.870 relating to public contracts and purchasing.

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

7 (b) In addition to all other requirements with which rule adoptions must comply, a rule is not
8 valid if the rule has not been submitted to the Legislative Counsel in the manner required by ORS
9 183.715.

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

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

17 (b) An agency may use an amended filing to correct a failure to include a fiscal impact state-
18 ment in a notice of intended action, as required by subsection (2)(b)(E) of this section, or to correct
19 an inaccurate fiscal impact statement, only if the agency developed the fiscal impact statement with
20 the assistance of an advisory committee or fiscal impact advisory committee appointed under ORS
21 183.333.

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

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

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

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

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

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

43 (16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be
44 affected by a proposed adoption, amendment or repeal, the committees receiving notice under sub-
45 section (15) of this section shall review the proposed adoption, amendment or repeal for compliance

1 with the legislation from which the proposed adoption, amendment or repeal results.

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

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

5 183.310. As used in this chapter:

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

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

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

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

14 (C) For the suspension, revocation or refusal to renew or issue a license where the licensee or
15 applicant for a license demands such hearing; or

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

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

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

23 (4) "Hearing officer" includes an administrative law judge.

24 (5) **"Household" means a group of individuals:**

25 (a) **Who are related by blood or marriage; and**

26 (b) **Who share living quarters.**

27 [(5)] (6) "License" includes the whole or part of any agency permit, certificate, approval, regis-
28 tration or similar form of permission required by law to pursue any commercial activity, trade, oc-
29 cupation or profession.

30 [(6)(a)] (7)(a) "Order" means any agency action expressed orally or in writing directed to a
31 named person or named persons, other than employees, officers or members of an agency. "Order"
32 includes any agency determination or decision issued in connection with a contested case proceed-
33 ing. "Order" includes:

34 (A) Agency action under ORS chapter 657 making determination for purposes of unemployment
35 compensation of employees of the state;

36 (B) Agency action under ORS chapter 240 which grants, denies, modifies, suspends or revokes
37 any right or privilege of an employee of the state; and

38 (C) Agency action under ORS 468B.050 to issue a permit.

39 (b) "Final order" means final agency action expressed in writing. "Final order" does not include
40 any tentative or preliminary agency declaration or statement that:

41 (A) Precedes final agency action; or

42 (B) Does not preclude further agency consideration of the subject matter of the statement or
43 declaration.

44 [(7)] (8) "Party" means:

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

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

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

7 [(8)] (9) "Person" means any individual, partnership, corporation, association, governmental
8 subdivision or public or private organization of any character other than an agency.

9 [(9)] (10) "Rule" means any agency directive, standard, regulation or statement of general ap-
10 plicability that implements, interprets or prescribes law or policy, or describes the procedure or
11 practice requirements of any agency. The term includes the amendment or repeal of a prior rule,
12 but does not include:

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

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

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

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

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

20 (d) Intra-agency memoranda.

21 (e) Executive orders of the Governor.

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

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

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

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

27 [(10)] (11) "Small business" means a corporation, partnership, sole proprietorship or other legal
28 entity formed for the purpose of making a profit, which is independently owned and operated from
29 all other businesses and which has 50 or fewer employees.

30 **SECTION 4.** ORS 430.357 is amended to read:

31 430.357. (1) The Oregon Health Authority shall adopt rules to implement ORS 430.338 to 430.380
32 and to establish minimum standards for alcohol and drug prevention and treatment programs in ac-
33 cordance with the rules, policies, priorities and standards of the Alcohol and Drug Policy Commis-
34 sion under ORS 430.242.

35 (2) All standards and guidelines adopted by the authority to implement programs authorized
36 under ORS 430.338 to 430.380 shall be adopted as rules pursuant to ORS chapter 183 regardless of
37 whether they come within the definition of rule in ORS 183.310 [(9)] (10).

38 **SECTION 5.** ORS 442.760 is amended to read:

39 442.760. Notwithstanding the provisions of ORS 183.310 [(7)] (8) and 183.480, only a party to a
40 cooperative program agreement or the Director of the Oregon Health Authority shall be entitled to
41 a contested case hearing or judicial review of an order issued pursuant to ORS 442.700 to 442.760
42 and 646.740.

43 **SECTION 6.** ORS 527.765 is amended to read:

44 527.765. (1) The State Board of Forestry shall establish best management practices and other
45 rules applying to forest practices as necessary to insure that to the maximum extent practicable

1 nonpoint source discharges of pollutants resulting from forest operations on forestlands do not im-
 2 pair the achievement and maintenance of water quality standards established by the Environmental
 3 Quality Commission for the waters of the state. Such best management practices shall consist of
 4 forest practices rules adopted to prevent or reduce pollution of waters of the state. Factors to be
 5 considered by the board in establishing best management practices shall include, where applicable,
 6 but not be limited to:

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

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

15 (3)(a) Notwithstanding ORS 183.310 [(8)] (9), upon written petition for rulemaking under ORS
 16 183.390 of any interested person or agency, the board shall review the best management practices
 17 adopted pursuant to this section. In addition to all other requirements of law, the petition must al-
 18 lege with reasonable specificity that nonpoint source discharges of pollutants resulting from forest
 19 operations being conducted in accordance with the best management practices are a significant
 20 contributor to violations of such standards.

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

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

28 (d) If a petition for review is dismissed, upon conclusion of the review, the board shall issue an
 29 order that includes findings regarding specific allegations in the petition and shall state the board's
 30 reasons for any conclusions to the contrary.

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

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

40 **SECTION 7. Section 1 of this 2017 Act is repealed on January 2, 2019.**