



February 22, 2018

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Oregon Progressive Party

Position on Bill at 2018

Session of Oregon Legislature:

HB 4052A: Strongly Oppose

Dear Committee:

The Oregon Progressive Party opposes this bill. It would allow every state agency to outsource the required 5-year review of every adopted rule to a Committee consisting of representatives of private business who are not required to make any financial disclosures and are not subject to conflict of interest regulation. The Committee is apparently also not subject to the public records or open meetings laws. There is no reason to expect that the small business representatives will reflect the interests of the public and not the interests of small business or even their own personal financial interests.

The bill has a misleading summary, which states:

- Establishes Small Business Rules Advisory Committee to serve as advisory committee for agencies adopting new administrative rules and to review effectiveness of existing administrative rules.
- Directs Secretary of State to compile reports on rules and to report annually to Legislative Assembly.

The summary fails to alert the reader that the bill allows any agency to avoid doing its required 5-year review of rules under ORS 183.405 by delegating that entire responsibility to a committee consisting of representatives of private businesses. ORS 183.405 now requires:

183.405 Agency review of rules.

- (1) Not later than five years after adopting a rule, an agency shall review the rule for the purpose of determining:
 - (a) Whether the rule has had the intended effect;
 - (b) Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
 - (c) Whether subsequent changes in the law require that the rule be repealed or amended; and
 - (d) Whether there is continued need for the rule.
- (2) An agency shall utilize available information in complying with the requirements of subsection (1)

of this section.

- (3) An agency shall provide a report on each review of a rule conducted under this section:
 - (a) To the Secretary of State; and
 - (b) If the agency appoints an advisory committee pursuant to ORS 183.333 for consideration of a rule subject to the requirements of this section, to the advisory committee.
- (4) The provisions of this section do not apply to the amendment or repeal of a rule.
- (5) The provisions of this section do not apply to:
 - (a) Rules adopted to implement court orders or the settlement of civil proceedings;
 - (b) Rules that adopt federal laws or rules by reference;
 - (c) Rules adopted to implement legislatively approved fee changes; or
 - (d) Rules adopted to correct errors or omissions. [2005 c.807 §3; 2017 c.518 §6]

Every agency must review each rule, within 5 years of its adoption, to see whether it is working, whether it is costing more than expected, and whether it should be repealed or amended. HB 4052A allows the agency to outsource that entire review to a group of private businesspeople, the Small Business Rules Advisory Committee (SRBAC). HB 4052A, Section 2(4) states:

- (4) Upon request of an agency, the committee may agree to complete the rules review and reporting required by ORS 183.405 in place of the agency.

This is outrageous. Outsourcing this important government function to representatives of private business is bad enough, but the members of the SBRAC are not even required to make any financial disclosures and are not subject to conflict of interest regulation. Nor is there any indication that the SBRAC is subject to the public records or open meetings laws. There is no reason to expect that the small business representatives will reflect the interests of the public and not the interests of small business or even their own personal financial interests.

The Staff Measure Summary on this bill is also wrong. It states that existing law requires "all state agencies to review rules at least every five years." That is not correct. ORS 183.405 requires only one 5-year review for each rule. But the Staff Measure Summary is accurate in stating that HB 4052A "eliminates requirement for all state agencies to review rules," because it would allow every agency to outsource the ORS 183.405 review to the SBRAC.

Please reject this bill or amend it to remove the outsourcing of rule reviews.

Oregon Progressive Party

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