

# House Bill 4052

Sponsored by Representative GOMBERG (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**.

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.

Requires agency to review effect of rule every five years.

Directs Secretary of State to compile reports on rules and to report annually to Legislative Assembly.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to administrative rules; creating new provisions; amending ORS 183.333 and 183.405; and  
3 prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2018 Act is added to and made a part of ORS 183.325 to**  
6 **183.410.**

7 **SECTION 2. (1) The Small Business Rules Advisory Committee is established to serve as**  
8 **an advisory committee for agencies adopting new administrative rules and to review the ef-**  
9 **fectiveness of existing administrative rules.**

10 **(2) The committee consists of nine members as follows:**

11 **(a) Two representatives of small businesses appointed by the Governor;**

12 **(b) Two representatives of small businesses appointed by the President of the Senate;**

13 **(c) Two representatives of small businesses appointed by the Speaker of the House;**

14 **(d) A representative of small businesses appointed by the Office of Small Business As-**  
15 **sistance established in ORS 56.203;**

16 **(e) A representative of state agencies appointed by the Director of the Oregon Depart-**  
17 **ment of Administrative Services; and**

18 **(f) A member who is an expert in the rulemaking process appointed by the State**  
19 **Archivist.**

20 **(3) Upon request of an agency, the committee shall serve as the advisory committee or**  
21 **fiscal impact advisory committee for reviewing an agency's proposed administrative rules**  
22 **under ORS 183.333.**

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

25 **(5) Upon request of a small business, the committee may review current or proposed**  
26 **administrative rules of an agency and report findings to the small business and the agency.**

27 **If the committee agrees to review rules under this subsection, the committee shall consider**  
28 **at least the following criteria for each rule:**

29 **(a) Whether the rule has had the intended effect;**

**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 (b) Whether the anticipated fiscal impact of the rule was underestimated or overesti-  
 2 mated;

3 (c) Whether subsequent changes in the law require that the rule be repealed or amended;

4 (d) Whether there is continued need for the rule;

5 (e) What impacts the rule has on small businesses; and

6 (f) Whether the rule is the least restrictive alternative.

7 (6) Members of the committee shall be appointed to serve for terms of two years, but a  
 8 member serves at the pleasure of the appointing authority. The appointing authority shall  
 9 appoint a person to fill any vacancy on the committee for the expired term. A member may  
 10 be reappointed to the committee.

11 (7) The members of the committee shall elect a chairperson from among the members  
 12 of the committee. In the absence of a chairperson, the member appointed by the State  
 13 Archivist shall serve as acting chairperson.

14 (8) A majority of the members of the committee constitutes a quorum for the transaction  
 15 of business.

16 (9) The committee shall meet upon the call of the chairperson or upon a request of a  
 17 majority of the members of the committee. The committee may meet by phone or video  
 18 conference with at least 24 hours' public notice.

19 (10) The State Archives shall provide administrative support to the committee.

20 (11) Members of the committee are not entitled to compensation, but may be reimbursed  
 21 from funds available to the State Archives for actual and necessary travel and other ex-  
 22 penses incurred by them in the performance of their official duties in the manner and  
 23 amounts provided for in ORS 292.495.

24 **SECTION 3.** ORS 183.333 is amended to read:

25 183.333. (1) The Legislative Assembly finds and declares that it is the policy of this state that  
 26 whenever possible the public be involved in the development of public policy by agencies and in the  
 27 drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maxi-  
 28 mum extent possible before giving notice of intent to adopt a rule. The agency may appoint an ad-  
 29 visory committee that will represent the interests of persons likely to be affected by the rule, or use  
 30 any other means of obtaining public views that will assist the agency in drafting the rule.

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

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

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

43 (5) If an agency does not appoint an advisory committee for consideration of a permanent rule  
 44 under subsection (1) of this section and 10 or more persons likely to be affected by the rule object  
 45 to the agency's statement of fiscal impact as required by ORS 183.335 (2)(b)(E) or an association with

1 at least 10 members likely to be affected by the rule objects to the statement, the agency shall ap-  
 2 point a fiscal impact advisory committee to provide recommendations on whether the rule will have  
 3 a fiscal impact and what the extent of that impact will be. An objection under this subsection must  
 4 be made not later than 14 days after the notice required by ORS 183.335 (1) is given. If the agency  
 5 determines that the statement does not adequately reflect the rule’s fiscal impact, the agency shall  
 6 extend the period for submission of data or views under ORS 183.335 (3)(a) by at least 20 days. The  
 7 agency shall include any recommendations from the committee in the record maintained by the  
 8 agency for the rule.

9 **(6) An agency may appoint the Small Business Rules Advisory Committee established in**  
 10 **section 2 of this 2018 Act as the advisory committee or fiscal impact advisory committee for**  
 11 **purposes of this section.**

12 [(6)] (7) Subsection (5) of this section does not apply to any rule adopted by an agency to comply  
 13 with a judgment or a settlement of a judicial proceeding.

14 [(7)] (8) If an agency is required by law to appoint an advisory committee under this section, the  
 15 agency may not appoint an officer, employee or other agent of the agency to serve as a member of  
 16 the advisory committee.

17 **SECTION 4.** ORS 183.405 is amended to read:

18 183.405. (1) Not later than five years after adopting a rule, **and at least every five years**  
 19 **thereafter**, an agency shall review the rule for the purpose of determining:

- 20 (a) Whether the rule has had the intended effect;
- 21 (b) Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
- 22 (c) Whether subsequent changes in the law require that the rule be repealed or amended; [and]
- 23 (d) Whether there is continued need for the rule;
- 24 (e) **What impacts the rule has on small businesses; and**
- 25 (f) **Whether the rule is the least restrictive alternative.**

26 (2) **Upon request of an agency, the Small Business Rules Advisory Committee established**  
 27 **in section 2 of this 2018 Act may agree to complete the review and reporting required by this**  
 28 **section for the agency.**

29 [(2)] (3) An agency **or the Small Business Rules Advisory Committee** shall utilize available  
 30 information in complying with the requirements of subsection (1) of this section.

31 [(3)] (4) An agency **or the Small Business Rules Advisory Committee** shall provide a report  
 32 on each review of a rule conducted under this section:

- 33 (a) To the Secretary of State;
- 34 (b) **To the Small Business Rules Advisory Committee, unless the committee completed**  
 35 **the review under subsection (2) of this section; and**

36 [(b)] (c) If the agency [appoints] **appointed** an advisory committee pursuant to ORS 183.333 for  
 37 consideration of a rule subject to the requirements of this section, to the advisory committee.

38 [(4)] (5) The provisions of this section do not apply to the amendment or repeal of a rule.

39 [(5)] (6) The provisions of this section do not apply to:

- 40 (a) Rules adopted to implement court orders or the settlement of civil proceedings;
- 41 (b) Rules that adopt federal laws or rules by reference;
- 42 (c) Rules adopted to implement legislatively approved fee changes; or
- 43 (d) Rules adopted to correct errors or omissions.

44 (7) **The Secretary of State shall compile the reports submitted under this section during**  
 45 **each calendar year and submit an annual report to the Legislative Assembly in the manner**

1 required by ORS 192.245 no later than February 1 of the following year.

2 **SECTION 5.** Notwithstanding the term of office specified by section 2 of this 2018 Act,  
3 the following members of the Small Business Rules Advisory Committee first appointed un-  
4 der section 2 of this 2018 Act shall serve for a term of one year:

5 (1) One of the members appointed under section 2 (2)(a) of this 2018 Act.

6 (2) Both members appointed under section 2 (2)(c) of this 2018 Act.

7 (3) The member appointed under section 2 (2)(d) of this 2018 Act.

8 (4) The member appointed under section 2 (2)(e) of this 2018 Act.

9 **SECTION 6.** This 2018 Act takes effect on the 91st day after the date on which the 2018  
10 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

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