House Bill 2334

Sponsored by Representative BONHAM (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.

Modifies provisions relating to statement of cost of compliance effect on small businesses required as part of agency rulemaking.

A BILL FOR AN ACT

Relating to effects of agency rulemaking on small businesses; creating new provisions; amending ORS 183.333, 183.335 and 183.336; and repealing ORS 183.540.

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

SECTION 1. ORS 183.335 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location

NOTE: Matter in boldfaced type in an amended section is new; matter in italic and bracketed is existing law to be omitted. New sections are in boldfaced type.

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at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list;

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

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

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

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

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

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

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

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

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

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

(A) All written materials submitted to an agency in response to a notice of intent to adopt, amend or repeal a rule.
(B) A recording or summary of oral submissions received at hearings held for the purpose of receiving those submissions.
(C) Any public comment received in response to the request made under subsection (2)(b)(G) of this section and the agency’s response to that comment.
(D) Any statements provided by the agency under paragraph (d) of this subsection.

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

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

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice;
(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;
(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need;
(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection; [and]

(e) A statement considering any significant economic effect of the action on businesses which shall include a cost of compliance effect on small businesses affected; and

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

(6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary and may be effective for a period of not longer than 180 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (4) of this section.
(b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

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

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

(c) Correcting spelling;

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

(e) Correcting statutory or rule references; or

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

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

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

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

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

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

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

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

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


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

(b) In addition to all other requirements with which rule adoptions must comply, a rule other than a rule amended for a purpose described in subsection (7) of this section is not valid if the rule has not been submitted to the Legislative Counsel in the manner required by ORS 183.355 and 183.715.
(c) A rule is not subject to judicial review or other challenge by reason of failing to comply with subsection (2)(a)(A) of this section.

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

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

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

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

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

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

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

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

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

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

SECTION 2. ORS 183.336 is amended to read:

183.336. (1) The statement of cost of compliance effect on small businesses required by ORS 183.335 (2)(b)(E) or (5)(e) must include:

(a) An estimate of the number of small businesses subject to the proposed rule and identification of the types of businesses and industries with small businesses subject to the proposed rule;

(b) A brief description of the projected reporting, recordkeeping and other administrative activ-
ities required for compliance with the proposed rule, including costs of professional services;
(c) An identification of equipment, supplies, labor and increased administration required for
compliance with the proposed rule; and
(d) A description of the manner in which the agency proposing the rule involved small busi-
nesses in the development of the rule.
(2) An agency shall utilize available information in complying with the requirements of this
section.
(3) If the statement of cost of compliance effect on small businesses shows that a rule
has a significant adverse effect upon small business, to the extent consistent with the public
health and safety purpose of the rule, the agency shall reduce the economic impact of the
rule on small business by:
(a) Establishing differing compliance or reporting requirements or time tables for small
business;
(b) Clarifying, consolidating or simplifying the compliance and reporting requirements
under the rule for small business; and
(c)(A) Utilizing objective criteria for standards;
(B) Exempting small businesses from any or all requirements of the rule; or
(C) Adopting a less intrusive or less costly rule applicable to small business.

SECTION 3. ORS 183.333 is amended to read:
183.333. (1) The Legislative Assembly finds and declares that it is the policy of this state that
whenever possible the public be involved in the development of public policy by agencies and in the
drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maxi-
umum extent possible before giving notice of intent to adopt a rule. The agency may appoint an ad-
avisory committee that will represent the interests of persons likely to be affected by the rule, or use
any other means of obtaining public views that will assist the agency in drafting the rule.
(2) Any agency in its discretion may develop a list of interested parties and inform those parties
of any issue that may be the subject of rulemaking and invite the parties to make comments on the
issue.
(3) If an agency appoints an advisory committee for consideration of a rule under subsection (1)
of this section, the agency shall seek the committee’s recommendations on whether the rule will
have a fiscal impact, what the extent of that impact will be and whether the rule will have a sig-
nificant adverse impact on small businesses. If the committee indicates that the rule will have a
significant adverse impact on small businesses, the agency shall seek the committee’s recom-
mandations on compliance with ORS 183.336 (3).
(4) An agency shall consider an advisory committee’s recommendations provided under sub-
section (3) of this section in preparing the statement of fiscal impact required by ORS 183.335
(2)(b)(E).
(5) If an agency does not appoint an advisory committee for consideration of a permanent rule
under subsection (1) of this section and 10 or more persons likely to be affected by the rule object
to the agency's statement of fiscal impact as required by ORS 183.335 (2)(b)(E) or an association with
at least 10 members likely to be affected by the rule objects to the statement, the agency shall ap-
point a fiscal impact advisory committee to provide recommendations on whether the rule will have
a fiscal impact and what the extent of that impact will be. An objection under this subsection must
be made not later than 14 days after the notice required by ORS 183.335 (1) is given. If the agency
determines that the statement does not adequately reflect the rule’s fiscal impact, the agency shall
extend the period for submission of data or views under ORS 183.335 (3)(a) by at least 20 days. The
agency shall include any recommendations from the committee in the record maintained by the
agency for the rule.

(6) An agency may appoint the Small Business Rules Advisory Committee established in ORS
183.407 as the advisory committee or fiscal impact advisory committee for purposes of this section.

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

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

SECTION 4. ORS 183.540 is repealed.

SECTION 5. The amendments to ORS 183.333, 183.335 and 183.336 by sections 1 to 3 of this
2021 Act and the repeal of ORS 183.540 by section 4 of this 2021 Act apply to notices of in-
tended action issued on or after the effective date of this 2021 Act.