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House Committee on Economic Recovery & Prosperity
OFB Supports HB 2334
March 11, 2021

Chair Lively and Members of the Committee,

Thank you for the opportunity to provide testimony in support of HB 2334. By way of background, the Oregon Farm Bureau is the state's largest agricultural trade association, representing nearly 7,000 farm and ranch families across the state. In addition to being some of the leading producers in the nation for a number of agricultural commodities, 97% of Oregon's farms and ranches are family owned and operated, with multiple generations of family members handling all aspects of operations and administration for the farm. Moreover, most agricultural employers only have a handful of employees on site throughout the year, with some needing no employees at all.

Sadly, Oregon's family farms and small businesses have been struggling to survive under the weight of our regulatory environment, and we are seeing the number of farmers in the state decrease every year as farms either go out of business or consolidate to achieve economies of scale. We know our small businesses struggle to manage our state's growing administrative and cost burdens, which is why the legislature created the "small business impacts analysis" back in 2005 (ORS 183.336). The purpose of the small business impacts analysis is to ensure that an agency identifies and evaluates the potential economic effect of a proposed rule on small business *at the time the rule is being developed and drafted*, so that the agency can, if needed under ORS 183.540, take steps to mitigate the impact on small businesses by modification of the rule itself.

Under current law, before an agency adopts a rule, it must provide public notice of the proposed rule and include a fiscal impact statement identifying economic consequences of the rule on agencies, local governments, and the public. In considering the economic effect on the public, an agency must identify any significant economic effect the rule will have on businesses, particularly small businesses by preparing at minimum a form stating: (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 activities 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 businesses in the development of the rule.

If the small business impacts analysis shows that a rule has a significant adverse effect upon small business, ORS 183.540 requires the agency to take any of the following steps to reduce the economic

impact of the rule on small business: (1) establish differing compliance or reporting requirements; (2) simplifying the compliance and reporting requirements under the rule; (3) utilizing objective criteria for standards; (4) exempting small businesses from any or all requirements of the rule; (5) or otherwise establishing less intrusive or less costly alternatives applicable to small business.

Unfortunately, instead of earnestly undertaking the small business impacts analysis and mitigating the impacts of costly administrative rules on Oregon's small businesses, most agencies have chosen to treat the analysis as merely a cursory "check the box" step in passing administrative rules. Specifically, we have seen agencies only fill out the "cost compliance" form of ORS 183.336, without actually identifying how many small businesses would be impacted by the rules, how much record keeping the rules would require and if that is reasonable for a small business without an in-house regulatory or Human Resources department, or even failing to recognize that the small business would need to hire full time staff just to comply with the rule itself. In some scenarios, the cost analysis has been merely four sentences. This approach to the analysis has resulted in agencies failing to fully inform the public and the legislature of increased cost burdens on our state's small businesses, who are then saddled with overwhelming regulatory costs.

Additionally, under current law, agencies are not required to undertake the small business impacts analysis for temporary rules, which can last up to 180 days and subsequently be made permanent. Agencies generally use temporary rules to get new programs off the ground, address an issue on an expedited timeframe, or modify their rules in response to litigation. While these rules currently do not need to be analyzed under the small business impacts test, they are often the foundation for permanent rules or made permanent verbatim. When temporary rules are made permanent, agencies then often fail to point to the fact that a rule is in place already to avoid analyzing the costs to small business, thus hampering the public's ability to understand the true economic impacts of the rules on our small businesses.

HB 2334 would help reenforce the original goal of the small business impacts analysis by making clear that agencies must seriously consider the economic consequences of either temporary or permanent rules at the time the rule is being developed and drafted, so that the agency can mitigate significant economic impacts of the rule before enforcement. Moreover, HB 2334 strengthens the mitigation measures of the ORS 183.540, so that if a significant economic effect is going to occur, the agency must take meaningful steps to alleviate the regulatory burdens of the rule on small businesses while still accomplishing its objective.

Our small and family-run businesses need your support now more than ever. Our small and local businesses have been decimated by COVID-19, wildfires, and devastating ice storms. We need the legislature to step in and strengthen the small business impacts analysis to ensure that state agencies are following their requirements under the law, identifying costs before adoption of rules, and protecting the businesses we know and love from overwhelming financial burdens.

For these reasons, we strongly urge you to vote YES on HB 2334. Thank you and please do not hesitate to reach out with any questions.

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