

**Testimony to the Senate Committee on Rules
On SB 42**

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**Jana Gastellum, Executive Director
Oregon Environmental Council**

Founded in 1968, the Oregon Environmental Council (OEC) is a nonprofit, nonpartisan, membership-based organization. We advance innovative, collaborative and equitable solutions to Oregon's environmental challenges for today and future generations.

OEC strongly opposes SB 42.

This bill assumes that Oregon's current rulemaking processes do not sufficiently take into account certain economic impacts. The bill elevates those fiscal issues over broad public interest in the substance of proposed rules. Existing rulemaking protocols already address the concerns this bill brings forward.

Oregon's current administrative rules require public process, including public hearings, and stakeholder or public advisory committees. Rules must align with legislative intent, and agencies must conduct a wide-ranging fiscal analysis of the proposed rule that includes possible economic impacts. In fact, agency fiscal impact analyses can be quite nuanced and reflect conditions on the ground.

SB 42, Section 1(E) explicitly orders agencies to consider consumer cost and job loss, but does not require equal attention be paid to consumer benefits and job gains. Oregon's rulemaking process already requires consideration of not only economic impacts but public health, environmental impacts and protection, safety and other broad interests. Adding this additional language destroys the balance achieved by current rulemaking protocols.

Section 1(E) also requires an agency to have a determination of the fiscal impacts of a rule before the rulemaking process. It is not realistic to expect an agency prior to rulemaking to have enough info to issues that costs will not exceed \$100K. As part of the rulemaking process agencies gather information on costs and in the process of gathering that information from a broad range of interested parties. Prior to gathering and analyzing that data, an agency cannot make an accurate fiscal determination of the impact of the proposed rule. Additionally, the fiscal impacts are often indeterminate for good reason: agencies often design programs where there are multiple opportunities to comply with the rule. Rules that have flexibility, which benefits regulated parties, won't have a one-sized fits all fiscal statement. In some cases, participating entities may earn credits that have a market value that changes over time.

Section 2(E) of SB 42 creates a mechanism that allows a small number of people to sabotage the rulemaking process of the agency. Those people do not have to provide any reason for requesting a third-party fiscal analysis, nor do they have to provide proof of any harm. In practice, they can stall any rule from going forward by requesting simply a third-party review for any reason, or no reason at all. If some party is dissatisfied with the outcome of a rulemaking, an avenue of relief already exists – they can challenge the rule in court and abide by that outcome.

By requiring the proposed third-party fiscal analysis to be supported by “substantial evidence” (undefined), SB 42 allows dissatisfied parties to challenge the rule on process, not the substance. In addition, this will increase the cost to the state of the rulemaking process where the third-party fiscal analysis is required on a rule-by-rule basis. In addition, this gives dissatisfied parties the opportunity to block a rule on procedural rather than substantive bases.

For all these reasons, OEC urges the committee to vote no on SB 42. We encourage you to instead provide full and adequate funding for the natural resources agencies so they can fulfill their many mandates in a timely, efficient and informed manner, including the rulemaking process.