

# House Bill 4073

Sponsored by Representative SCHARF; Senator DRAZAN (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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act changes some laws about agency actions. (Flesch Readability Score: 61.2).

Modifies provisions relating to administrative law.

Relocates provisions relating to portions of the fiscal impact statement for administrative rules regarding businesses and small businesses.

## A BILL FOR AN ACT

Relating to administrative law; creating new provisions; amending ORS 183.333, 183.335, 183.355, 183.482, 183.484, 196.115, 279B.415 and 813.450; and repealing ORS 183.336.

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

**SECTION 1.** ORS 183.333 is amended to read:

183.333. *[(1)(a)]* **(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 maximum extent possible before giving notice of intent to adopt a rule. **Before an agency gives notice of intent to adopt a permanent rule that will result in new requirements, changes to compliance obligations or new or increased costs for persons regulated by the agency, the agency shall appoint an advisory committee as described in this section. Before an agency gives notice of intent to adopt a rule that does not result in new requirements, changes to compliance obligations or new or increased costs for persons regulated by the agency, the** agency may appoint an advisory committee or use any other means of obtaining public views that will assist the agency in drafting the rule.

**(2) At least 14 days before an agency gives notice of intent to adopt a permanent rule that will result in new requirements, changes to compliance obligations or new or increased costs for persons regulated by the agency, the agency shall post a public request for interest in a advisory committee for rule development. The agency shall send the notice to the list of interested parties developed under subsection (10) of this section and shall post the notice on the agency's website. If the agency receives a request for appointment of an advisory committee from a person regulated by the agency or from an association of persons regulated by the agency during the 14-day period, the agency shall appoint an advisory committee. If the agency does not receive a request to appoint an advisory committee from a person regulated by the agency or from an association of persons regulated by the agency during the 14-day period, the agency may proceed with the rulemaking process without appointing an advisory committee.**

*[(b)]* **(a)** The membership of an advisory committee appointed under this *[subsection]* **section** must represent the interests of persons and communities likely to be affected by the rule~~], and~~

**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.

**must include representatives of regulated entities of the agency and the program within the agency undertaking the rulemaking. The advisory committee may also include representatives from unregulated entities but the number of representatives of unregulated entities may not exceed the number of representatives of regulated entities.**

[(c)] (b) An agency that appoints an advisory committee under this [subsection] **section** with regard to adoption of rules implementing legislation enacted by the Legislative Assembly shall invite to participate as a nonvoting member of the committee:

(A) For legislation sponsored by a member of the Legislative Assembly, the first chief sponsor of the legislation, or another sponsor of the legislation as designated by the first chief sponsor.

(B) For legislation sponsored by a committee of the Legislative Assembly, the chair of the committee that sponsored the legislation at the time the legislation was introduced, or another member of the committee as designated by the chair.

[(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) An advisory committee appointed under this section may meet in person or virtually, but meetings of the advisory committee must be open to the public and the advisory committee process must include an opportunity for public comment.**

[(3)] (4) 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 significant 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 recommendations on compliance with ORS 183.540.

[(4)] (5) An agency shall consider an advisory committee's recommendations provided under subsection [(3)] (4) of this section in preparing the statement of fiscal impact required by ORS 183.335 (2)(b)(E).

[(5)] (6) 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 appoint 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. The membership of the fiscal impact advisory committee must represent the interests of persons and communities likely to be affected by the rule. 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)] (7) 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)] (8) Subsection [(5)] (6) 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)] (9) If an agency is required by law to appoint an advisory committee or a fiscal impact

1 advisory committee under this section, the agency may not appoint an officer, employee or other  
 2 agent of the agency to serve as a member of the advisory committee or fiscal impact advisory  
 3 committee.

4 **(10) Any agency in its discretion may develop a list of interested parties and inform those**  
 5 **parties of any issue that may be the subject of rulemaking and invite the parties to make**  
 6 **comments on the issue.**

7 **SECTION 2.** ORS 183.335 is amended to read:

8 183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice  
 9 of its intended action:

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

12 (b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the *[effective]* date **the**  
 13 **rule is filed with the Secretary of State as provided in ORS 183.355;**

14 (c) At least 28 days before the *[effective]* date **the rule is filed with the Secretary of State**  
 15 **as provided in ORS 183.355**, to persons who have requested notice pursuant to subsection (8) of this  
 16 section; and

17 (d) Delivered only by electronic mail, at least 49 days before the *[effective]* date **the rule is filed**  
 18 **with the Secretary of State as provided in ORS 183.355**, to the persons specified in subsection  
 19 (15) of this section.

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

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

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

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

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

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

33 (C) A statement of the need for the rule *[and a]*, **including, if applicable, a detailed de-**  
 34 **scription of the problem the agency is attempting to solve with the rule and a detailed**  
 35 **statement of how the rule is intended to meet the need or solve the problem;**

36 (D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by  
 37 the agency in considering the need for and in preparing the rule, and a statement of the location  
 38 at which those documents are available for public inspection. The list may be abbreviated if neces-  
 39 sary, and if so abbreviated there shall be identified the location of a complete list;

40 (E)(i) A statement of fiscal impact identifying state agencies, units of local government and the  
 41 public that may be economically affected by the adoption, amendment or repeal of the rule and an  
 42 estimate of that economic impact on state agencies, units of local government and the public. In  
 43 considering the economic effect of the proposed action on the public, the agency shall utilize avail-  
 44 able information to project any significant economic effect of that action on businesses *[which shall*  
 45 *include a cost of compliance effect on small businesses affected.]* **and small businesses, including:**

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

(II) A description of the projected reporting, recordkeeping and other administrative activities required for compliance with the proposed rule, including costs of professional services;

(III) An identification of equipment, supplies, labor and increased administration required for compliance with the proposed rule;

(IV) A summary of possible opportunity costs associated with compliance with the proposed rule, which may be achieved by publishing comments on opportunity costs that were provided to the agency in the fiscal impact statement process; and

(V) A description of the manner in which the agency proposing the rule involved small businesses in the development of the rule; and

(ii) If an agency determines that there is no fiscal impact on businesses and small businesses, the statement of fiscal impact must also include documentation of feedback about costs from representatives of businesses and small businesses; and

(iii) For an agency specified in ORS 183.530, the statement of fiscal impact *[shall]* **must** also include a housing cost impact statement as described in ORS 183.534;

(F) A statement identifying how adoption of the rule will affect racial equity in this state;

(G) 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

(H) A **description of alternative options the agency considered in developing the rule and** 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. **The agency shall consider fully any written or oral submission.** 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]* **be adopted, amended or repealed** 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:

(A) 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, **to the list of interested parties developed under ORS 183.333 (10)** 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) **Post the notice on the agency's website and on the Oregon transparency website at least 21 days before the hearing.**

(C) Publish notice of the hearing in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. An agency that fails to provide the 14-day notice required under this subparagraph shall reschedule the hearing and provide proper notice.

(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 effective] **be adopted, amended or repealed** 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)(H) 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] **be adopted, amended or repealed** 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

1 need;

2 (d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by  
3 the agency in considering the need for and in preparing the rule, and a statement of the location  
4 at which those documents are available for public inspection; and

5 (e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS  
6 183.534.

7 (6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary  
8 and may be effective for a period of not longer than 180 days. The adoption of a rule under this  
9 subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to  
10 (4) of this section.

11 (b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary  
12 period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

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

15 (a) Changing the name of an agency by reason of a name change prescribed by law;

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

18 (c) Correcting spelling;

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

21 (e) Correcting statutory or rule references;

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

23 (g) Changing a term or phrase in order to conform with a change prescribed by law.

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

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

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

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

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

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

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

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

5 (10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.161, 279A.250 to  
6 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280,  
7 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545,  
8 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and  
9 279C.800 to 279C.870 relating to public contracts and purchasing.

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

14 (b) In addition to all other requirements with which rule adoptions must comply, a rule other  
15 than a rule amended for a purpose described in subsection (7) of this section is not valid if the rule  
16 has not been submitted to the Legislative Counsel in the manner required by ORS 183.355 and  
17 183.715.

18 (c) A rule is not subject to judicial review or other challenge by reason of failing to comply with  
19 subsection (2)(a)(A) of this section.

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

25 (b) An agency may use an amended filing to correct a failure to include a fiscal impact state-  
26 ment in a notice of intended action, as required by subsection (2)(b)(E) of this section, or to correct  
27 an inaccurate fiscal impact statement, only if the agency developed the fiscal impact statement with  
28 the assistance of an advisory committee or fiscal impact advisory committee appointed under ORS  
29 183.333.

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

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

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

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

44 (b) If the proposed adoption, amendment or repeal does not result from legislation that was  
45 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.

**(17) If a proposed adoption, amendment or repeal increases the administrative costs of a division or department budget by 0.5 percent or more or increases positions needed for program operations or enforcement, the agency shall submit a report in the manner described in ORS 192.245 to the Joint Committee on Ways and Means and the Joint Legislative Audit Committee.**

**SECTION 3.** ORS 183.355 is amended to read:

183.355. (1) The Secretary of State shall by rule prescribe requirements for the manner and form for filing rules adopted, amended or repealed by agencies. The Secretary of State may refuse to accept for filing any rules that do not comply with the requirements.

(2)(a) Each agency shall file with the office of the Secretary of State each rule adopted, **amended or repealed** by the agency.

**(b) The filing of a permanent rule must include a summary of public comments received by the agency about the rule and the agency's response to common public comments.**

[(b)] (c) Unless otherwise provided by rule adopted by the Secretary of State, an agency adopting a rule incorporating published standards by reference is not required to file a copy of those standards with the Secretary of State if:

(A) The standards adopted are unusually voluminous and costly to reproduce; and

(B) The rule filed with the Secretary of State identifies the location of the standards so incorporated and the conditions of their availability to the public.

(3) Each rule is effective *[upon]* **30 days after the date of** filing as required by subsection (2) of this section, except that:

(a) If a later effective date is required by statute or specified in the rule, the later date is the effective date.

(b) A temporary rule becomes effective upon filing with the Secretary of State, or at a designated later date, *[only]* if the statement required by ORS 183.335 (5) is filed with the rule. The agency shall take appropriate measures to make temporary rules known to the persons who may be affected by them.

*[(4) When a rule is amended or repealed by an agency, the agency shall file the amendment or notice of repeal with the Secretary of State.]*

[(5)] (4) A certified copy of each executive order issued, prescribed or promulgated by the Governor shall be filed in the office of the Secretary of State.

[(6)] (5) A rule is not valid or effective against any person or party until the rule *[is filed]* **becomes effective** in accordance with this section. However, if an agency, in disposing of a contested case, announces in its decision the adoption of a general policy applicable to the case and subse-



quent cases of like nature the agency may rely upon the decision in disposition of later cases.

[(7)] (6) The Secretary of State shall, upon request, supply copies of rules, or orders or designated parts of rules or orders, in the format requested, making and collecting therefor fees prescribed by ORS 177.130. All receipts from the sale of copies shall be deposited in the State Treasury to the credit of the Secretary of State Miscellaneous Receipts Account established under ORS 279A.290.

[(8)] (7) The Secretary of State shall establish and collect fees from agencies filing rules under this section. The fees shall be established in amounts calculated to be necessary to generate revenues adequate to pay costs incurred by the Secretary of State in performing the following duties that are not paid for by subscriber fees or other fees prescribed by law:

(a) Publication of the compilation referred to in ORS 183.360 (1);

(b) Electronic publication of the bulletin referred to in ORS 183.360 (3); and

(c) Electronic publication of rules and other information relating to rules under ORS 183.365.

[(9)] (8) All fees collected under subsection [(8)] (7) of this section shall be deposited in the State Treasury to the credit of the Secretary of State Miscellaneous Receipts Account established under ORS 279A.290.

[(10)] (9) No later than 10 days after an agency files an adopted, amended or repealed rule with the Secretary of State, other than a rule amended for a purpose described in ORS 183.335 (7), the Secretary of State shall:

(a) Electronically transmit the rule to the Legislative Counsel in accordance with ORS 183.715; and

(b) Provide to the agency that filed the rule a written confirmation that the rule was transmitted to the Legislative Counsel.

**SECTION 4.** ORS 183.482 is amended to read:

183.482. (1) Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The petition shall be filed within 60 days only following the date the order upon which the petition is based is served unless otherwise provided by statute. If a petition for rehearing has been filed, then the petition for review shall be filed within 60 days only following the date the order denying the petition for rehearing is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such cases, petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(2) The petition shall state the nature of the order the petitioner desires reviewed, and shall state whether the petitioner was a party to the administrative proceeding, was denied status as a party or is seeking judicial review as a person adversely affected or aggrieved by the agency order. In the latter case, the petitioner shall, by supporting affidavit, state the facts showing how the petitioner is adversely affected or aggrieved by the agency order. Before deciding the issues raised by the petition for review, the Court of Appeals shall decide, from facts set forth in the affidavit, whether or not the petitioner is entitled to petition as an adversely affected or an aggrieved person. Copies of the petition shall be served by registered or certified mail upon the agency, and all other parties of record in the agency proceeding.

(3)(a) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so upon a showing of:

1 (A) Irreparable injury to the petitioner; and

2 (B) A colorable claim of error in the order.

3 (b) When a petitioner makes the showing required by paragraph (a) of this subsection, the  
4 agency shall grant the stay unless the agency determines that substantial public harm will result if  
5 the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically  
6 state the substantial public harm that would result from the granting of the stay.

7 (c) When the agency grants a stay, the agency may impose such reasonable conditions as the  
8 giving of a bond, irrevocable letter of credit or other undertaking and that the petitioner file all  
9 documents necessary to bring the matter to issue before the Court of Appeals within specified rea-  
10 sonable periods of time.

11 (d) Agency denial of a motion for stay is subject to review by the Court of Appeals under such  
12 rules as the court may establish.

13 (4) Within 30 days after service of the petition, or within such further time as the court may  
14 allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire  
15 record of the proceeding under review, but, by stipulation of all parties to the review proceeding,  
16 the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may  
17 be taxed by the court for the additional costs. The court may require or permit subsequent cor-  
18 rections or additions to the record when deemed desirable. Except as specifically provided in this  
19 subsection, the cost of the record shall not be taxed to the petitioner or any intervening party.  
20 However, the court may tax such costs and the cost of agency transcription of record to a party  
21 filing a frivolous petition for review.

22 (5) If, on review of a contested case, before the date set for hearing, application is made to the  
23 court for leave to present additional evidence, and it is shown to the satisfaction of the court that  
24 the additional evidence is material and that there were good and substantial reasons for failure to  
25 present it in the proceeding before the agency, the court may order that the additional evidence be  
26 taken before the agency upon such conditions as the court deems proper. The agency may modify  
27 its findings and order by reason of the additional evidence and shall, within a time to be fixed by  
28 the court, file with the reviewing court, to become a part of the record, the additional evidence,  
29 together with any modifications or new findings or orders, or its certificate that the agency elects  
30 to stand on its original findings and order, as the case may be.

31 (6) At any time subsequent to the filing of the petition for review and prior to the date set for  
32 hearing the agency may withdraw its order for purposes of reconsideration. If an agency withdraws  
33 an order for purposes of reconsideration, the agency shall, within such time as the court may allow,  
34 affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after  
35 withdrawal for purposes of reconsideration, the petitioner may refile the petition for review and the  
36 review shall proceed upon the revised order. An amended petition for review shall not be required  
37 if the agency, on reconsideration, affirms the order or modifies the order with only minor changes.  
38 If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order  
39 in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid  
40 from funds available to the agency.

41 (7) Review of a contested case shall be confined to the record, and the court shall not substitute  
42 its judgment for that of the agency as to any issue of fact or agency discretion. In the case of dis-  
43 puted allegations of irregularities in procedure before the agency not shown in the record which, if  
44 proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a  
45 master appointed by the court to take evidence and make findings of fact upon them. The court shall

1 remand the order for further agency action if the court finds that either the fairness of the pro-  
 2 ceedings or the correctness of the action may have been impaired by a material error in procedure  
 3 or a failure to follow prescribed procedure, including a failure by the presiding officer to comply  
 4 with the requirements of ORS 183.417 (8).

5 (8)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has  
 6 erroneously interpreted a provision of law and that a correct interpretation compels a particular  
 7 action, the court shall:

8 (A) Set aside or modify the order; or

9 (B) Remand the case to the agency for further action under a correct interpretation of the pro-  
 10 vision of law.

11 (b) The court shall remand the order to the agency if the court finds the agency's exercise of  
 12 discretion to be:

13 (A) Outside the range of discretion delegated to the agency by law;

14 (B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency  
 15 practice, if the inconsistency is not explained by the agency; or

16 (C) Otherwise in violation of a constitutional or statutory provision.

17 (c) The court shall set aside or remand the order if the court finds that the order is not sup-  
 18 ported by substantial evidence in the record. Substantial evidence exists to support a finding of fact  
 19 when the record, viewed as a whole, would permit a reasonable person to make that finding.

20 **(d) The court shall set aside or remand the order if the court finds that the agency action**  
 21 **or the findings or conclusions supporting the order were arbitrary or capricious.**

22 **SECTION 5.** ORS 183.484 is amended to read:

23 183.484. (1) Jurisdiction for judicial review of orders other than contested cases is conferred  
 24 upon the Circuit Court for Marion County and upon the circuit court for the county in which the  
 25 petitioner resides or has a principal business office. Proceedings for review under this section shall  
 26 be instituted by filing a petition in the Circuit Court for Marion County or the circuit court for the  
 27 county in which the petitioner resides or has a principal business office.

28 (2) Petitions for review shall be filed within 60 days only following the date the order is served,  
 29 or if a petition for reconsideration or rehearing has been filed, then within 60 days only following  
 30 the date the order denying such petition is served. If the agency does not otherwise act, a petition  
 31 for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition  
 32 was filed, and in such case petition for judicial review shall be filed within 60 days only following  
 33 such date. Date of service shall be the date on which the agency delivered or mailed its order in  
 34 accordance with ORS 183.470.

35 (3) The petition shall state the nature of the petitioner's interest, the facts showing how the  
 36 petitioner is adversely affected or aggrieved by the agency order and the ground or grounds upon  
 37 which the petitioner contends the order should be reversed or remanded. The review shall proceed  
 38 and be conducted by the court without a jury.

39 (4) At any time subsequent to the filing of the petition for review and prior to the date set for  
 40 hearing, the agency may withdraw its order for purposes of reconsideration. If an agency withdraws  
 41 an order for purposes of reconsideration, it shall, within such time as the court may allow, affirm,  
 42 modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal  
 43 for purposes of reconsideration, the petitioner may refile the petition for review and the review shall  
 44 proceed upon the revised order. An amended petition for review shall not be required if the agency,  
 45 on reconsideration, affirms the order or modifies the order with only minor changes. If an agency

1 withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of  
 2 the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds  
 3 available to the agency.

4 (5)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has  
 5 erroneously interpreted a provision of law and that a correct interpretation compels a particular  
 6 action, it shall:

7 (A) Set aside or modify the order; or

8 (B) Remand the case to the agency for further action under a correct interpretation of the pro-  
 9 vision of law.

10 (b) The court shall remand the order to the agency if *[it]* **the court** finds the agency's exercise  
 11 of discretion to be:

12 (A) Outside the range of discretion delegated to the agency by law;

13 (B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency  
 14 practice, if the inconsistency is not explained by the agency; or

15 (C) Otherwise in violation of a constitutional or statutory provision.

16 (c) The court shall set aside or remand the order if *[it]* **the court** finds that the order is not  
 17 supported by substantial evidence in the record. Substantial evidence exists to support a finding of  
 18 fact when the record, viewed as a whole, would permit a reasonable person to make that finding.

19 **(d) The court shall set aside or remand the order if the court finds that the agency action**  
 20 **or the findings or conclusions supporting the order were arbitrary or capricious.**

21 (6) In the case of reversal the court shall make special findings of fact based upon the evidence  
 22 in the record and conclusions of law indicating clearly all aspects in which the agency's order is  
 23 erroneous.

24 **SECTION 6.** ORS 196.115 is amended to read:

25 196.115. (1) For purposes of judicial review, decisions of the Columbia River Gorge Commission  
 26 shall be subject to review solely as provided in this section, except as otherwise provided by the  
 27 Columbia River Gorge National Scenic Area Act, P.L. 99-663.

28 (2)(a) A final action or order by the commission in a review or appeal of any action of the  
 29 commission pursuant to section 10(c) or 15(b)(4) of the Columbia River Gorge National Scenic Area  
 30 Act, or a final action or order by the commission in a review or appeal of any action of a county  
 31 pursuant to section 15(a)(2) or 15(b)(4) of the Columbia River Gorge National Scenic Area Act, shall  
 32 be reviewed by the Court of Appeals on a petition for judicial review filed and served as provided  
 33 in subsections (3) and (4) of this section and ORS 183.482.

34 (b) On a petition for judicial review under paragraph (a) of this subsection the Court of Appeals  
 35 also shall review the action of the county that is the subject of the commission's order, if requested  
 36 in the petition.

37 (c) The Court of Appeals shall issue a final order on review under this subsection within the  
 38 time limits provided by ORS 197.855.

39 (d) In lieu of judicial review under paragraphs (a) and (b) of this subsection, a county action  
 40 may be appealed to the Land Use Board of Appeals under ORS 197.805 to 197.855. A notice of intent  
 41 to appeal the county's action shall be filed not later than 21 days after the commission's order on  
 42 the county action becomes final.

43 (e) Notwithstanding ORS 197.835, the scope of review in an appeal pursuant to paragraph (d)  
 44 of this subsection shall not include any issue relating to interpretation or implementation of the  
 45 Columbia River Gorge National Scenic Area Act, P.L. 99-663, and any issue related to such inter-

pretation or implementation shall be waived by the filing of an appeal under paragraph (d) of this subsection.

(f) After county land use ordinances are approved pursuant to sections 7(b) and 8(h) to (k) of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the Land Use Board of Appeals shall not review land use decisions within the general management area or special management area for compliance with the statewide planning goals. The limitation of this paragraph shall not apply if the Land Conservation and Development Commission decertifies the management plan pursuant to ORS 196.107.

(3)(a) If a petition for judicial review of a commission order is filed pursuant to subsection (2)(a) of this section, the procedures to be followed by the parties, the commission and the court, and the court's review, shall be in accordance with ORS 183.480, 183.482 (1) to (7), 183.485, 183.486, 183.490 and 183.497, except as this section or the Columbia River Gorge National Scenic Area Act, P.L. 99-663, otherwise provides.

(b) Notwithstanding any provision of ORS 183.482:

(A) The commission shall transmit the original record or the certified copy of the entire record within 21 days after service of a petition for judicial review is served on the commission; and

(B) The parties shall file briefs with the court within the times allowed by rules of the court.

(c) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, the court shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(d) The court shall remand the order to the agency if the court finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position or a prior agency practice, unless the inconsistency is explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(e) The court shall set aside or remand the order if the court finds that the order is not supported by substantial evidence in the whole record.

**(f) The court shall set aside or remand the order if the court finds that the agency action or the findings or conclusions supporting the order were arbitrary or capricious.**

[(f)] (g) Notwithstanding any other provision of this section, in any case where review of a county action as well as a commission order is sought pursuant to subsection (2)(a) and (b) of this section, the court shall accept any findings of fact by the commission which the court finds to be supported by substantial evidence in the whole record, and such findings by the commission shall prevail over any findings by the county concerning the same or substantially the same facts.

(4)(a) Except as otherwise provided by this section or the Columbia River Gorge National Scenic Area Act, P.L. 99-663, if review of a county action is sought pursuant to subsection (2)(b) of this section, the procedures to be followed by the parties, the county and the court, and the court's review, shall be in accordance with those provisions governing review of county land use decisions by the Land Use Board of Appeals set forth in ORS 197.830 (2) to (8), (10), (15) and (16) and 197.835 (2) to (10), (12) and (13). As used in this section, "board" as used in the enumerated provisions shall mean "court" and the term "notice of intent to appeal" in ORS 197.830 (10) shall refer to the petition

described in subsection (2) of this section.

(b) In addition to the other requirements of service under this section, the petitioner shall serve the petition upon the persons and bodies described in ORS 197.830 (9), as a prerequisite to judicial review of the county action.

(c) In accordance with subsection (3)(b)(B) of this section, a party to a review of both a commission order and a county action shall file only one brief with the court, which shall address both the commission order and the county action.

(d) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record. Subject to subsection [(3)(f)] **(3)(g)** of this section, the court shall be bound by any finding of fact of the county for which there is substantial evidence in the whole record. The court may appoint a master and follow the procedures of ORS 183.482 (7) in connection with matters that the board may take evidence for under ORS 197.835 (2).

(5) Approval of county land use ordinances by the commission pursuant to section 7 of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, may be reviewed by the Court of Appeals as provided in ORS 183.482.

(6) Notwithstanding ORS 183.484, any proceeding filed in circuit court by or against the commission shall be filed with the circuit court for the county in which the commission has a principal business office or in which the land involved in the proceeding is located.

**SECTION 7.** ORS 279B.415 is amended to read:

279B.415. (1) As used in this section, "bidder" includes a person who submits a proposal to a public contracting agency pursuant to a request for proposals.

(2) A decision by a state contracting agency on a protest of a contract award is reviewable by the Circuit Court for Marion County or the circuit court for the county in which the principal offices of the state contracting agency are located. A decision by a local contracting agency on a protest of a contract award is reviewable by the circuit court for the county in which the principal offices of the local contracting agency are located.

(3) To obtain review, a complainant must commence an action before the contract that is the subject of the protest is approved by the Attorney General, if required by ORS 291.047, and executed by the contracting agency. In the complaint, the complainant shall state the nature of the complainant's interest, the facts showing how the complainant is adversely affected or aggrieved by the contracting agency's decision and the basis upon which the decision should be reversed or remanded. The complainant shall join as parties all bidders that would be in line for an award of the contract ahead of the complainant. If injunctive relief is sought, the court may require the person seeking a stay to post a bond in an amount sufficient to protect the contracting agency and the public from costs associated with delay in execution of the contract.

(4) When judicial review is sought, the contracting agency may not proceed with contract execution unless the contracting agency determines that there is a compelling governmental interest in proceeding or that the goods and services are urgently needed. If the contracting agency makes such a determination, the contracting agency shall set forth the reasons for the determination in writing and immediately provide them to the complainant. Thereafter, upon motion from the complainant, the court may nonetheless stay the performance of the contract if the court finds that the contracting agency's determination of the existence of a compelling governmental interest in proceeding with contract execution, or the contracting agency's determination that the goods or services were urgently needed, was not supported by substantial evidence or constituted a manifest abuse of discretion. In granting a stay, the court may require the person seeking the stay to post

1 a bond in an amount sufficient to protect the contracting agency and the public from costs associ-  
 2 ated with delay in contract performance.

3 (5) The court shall review the matter without a jury and shall consider only those grounds the  
 4 complainant raised in the protest to the contracting agency.

5 (6)(a) The court shall remand the matter to the contracting agency for a further decision if:

6 [(a)] (A) Substantial evidence does not exist to support the contracting agency's decision. Sub-  
 7 stantial evidence exists to support a finding of fact when the record, viewed as a whole, would  
 8 permit a reasonable person to make that finding;

9 [(b)] (B) The contracting agency's decision was outside the range of discretion delegated to the  
 10 contracting agency by law;

11 [(c)] (C) The decision was inconsistent with a contracting agency rule, an officially stated con-  
 12 tracting agency position or an officially stated prior contracting agency practice, if the inconsis-  
 13 tency is not explained by the contracting agency; or

14 [(d)] (D) The decision was in violation of a constitutional or statutory provision.

15 **(b) The court shall set aside or remand the matter to the contracting agency if the court**  
 16 **finds that the department action or the findings or conclusions supporting the matter were**  
 17 **arbitrary or capricious.**

18 (7)(a) In addition to remanding the decision to the contracting agency, the court may order such  
 19 ancillary relief, such as the cost of bid preparation, as the court finds necessary to redress the ef-  
 20 fects of official action wrongfully taken or withheld. Ancillary relief does not include the award of  
 21 a contract to the complainant or the award of lost profits or other damages.

22 (b) If a contract has not been executed and the court rules in favor of the complainant, the court  
 23 shall remand the matter to the contracting agency for a determination whether to continue with the  
 24 procurement process in light of the court's decision.

25 (c) If a contract has been executed, in addition to the relief provided for in paragraph (a) of this  
 26 subsection, the court shall include in its order a determination whether the party that signed the  
 27 contract with the contracting agency is entitled to reimbursement under the conditions of, and cal-  
 28 culated in the same manner as provided in, ORS 279C.470. Notwithstanding that ORS 279C.470 oth-  
 29 erwise applies only to public improvement contracts, under this paragraph the court shall apply ORS  
 30 279C.470 to both public improvement contracts and other public contracts of contracting agencies.

31 (d) The court may award costs and attorney fees to the prevailing party.

32 **SECTION 8.** ORS 813.450 is amended to read:

33 813.450. (1) The petition to the circuit court appealing an order of the Department of Trans-  
 34 portation after a hearing under ORS 813.410 shall state the nature of the petitioner's interest and  
 35 the ground or grounds upon which the petitioner contends the order should be reversed or re-  
 36 manded.

37 (2) The court shall conduct the review without a jury. Review shall be limited to the record of  
 38 the department's hearing.

39 (3) Any party to the proceedings before the circuit court may appeal from the judgment of the  
 40 court to the Court of Appeals.

41 (4) Upon review in the circuit court and Court of Appeals, the court may affirm, reverse or re-  
 42 mand the order as follows:

43 (a) If the court finds that the department has erroneously interpreted a provision of law and that  
 44 a correct interpretation compels a particular action, it shall:

45 (A) Set aside or modify the order; or

1 (B) Remand the case to the department for further action under a correct interpretation of the  
2 provision of law.

3 (b) The court shall remand the order to the department if it finds the department's exercise of  
4 discretion to be any of the following:

5 (A) Outside the range of discretion delegated to the agency by law.

6 (B) Inconsistent with a department rule, an officially stated department position, or a prior de-  
7 partment practice, if the inconsistency is not explained by the department.

8 (C) Otherwise in violation of a constitutional or statutory provision.

9 (c) The court shall set aside or remand the order if it finds that the order is not supported by  
10 substantial evidence in the record.

11 **(d) The court shall set aside or remand the order if the court finds that the department**  
12 **action or the findings or conclusions supporting the order were arbitrary or capricious.**

13 (5) Upon review, the court shall affirm the department's order unless the court finds a ground  
14 for setting aside, modifying or remanding to the department under a specified provision of this sec-  
15 tion.

16 (6) In any review under this section, the court shall also review de novo determinations made  
17 by an agency that are subject to ORS 183.650 (4).

18 **SECTION 9. Section 10 of this 2026 Act is added to and made a part of ORS chapter 183.**

19 **SECTION 10. The Oregon Department of Administrative Services, the Department of**  
20 **Justice and the Office of Small Business Assistance shall collaborate to publish a guide to**  
21 **administrative rules designed for the general public.**

22 **SECTION 11. ORS 183.336 is repealed.**

23 **SECTION 12. The amendments to ORS 183.333, 183.335 and 183.355 by sections 1 to 3 of**  
24 **this 2026 Act and the repeal of ORS 183.336 by section 11 of this 2026 Act apply to rules for**  
25 **which an agency gives notice of intended action under ORS 183.335 on or after the effective**  
26 **date of this 2026 Act.**

27 **SECTION 13. The amendments to ORS 183.482, 183.484, 196.115, 279B.415 and 813.450 by**  
28 **sections 4 to 8 of this 2026 Act apply to orders served on or after the effective date of this**  
29 **2026 Act.**