

Enrolled Senate Bill 227

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CHAPTER

AN ACT

Relating to state agency rulemaking; amending ORS 183.330, 183.335, 183.355, 183.360, 183.365, 183.405, 183.715 and 561.510; repealing ORS 183.362 and 183.725; and prescribing an effective date.

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

SECTION 1. ORS 183.330 is amended to read:

183.330. (1) In addition to other rulemaking requirements imposed by law, each agency shall publish a description of its organization and the methods whereby the public may obtain information or make submissions or requests.

(2) Each state agency that adopts rules shall appoint a rules coordinator and file a copy of that appointment with the Secretary of State. The rules coordinator shall:

(a) Maintain copies of all rules adopted by the agency [*and be able to provide information to the public about the status of those rules*];

(b) Provide [*information*] to the public, [*on*] **upon request, information pertaining to:**

(A) All rulemaking proceedings of the agency; [*and*]

(B) The status of the agency's rules; and

(C) All certificates and rules filed by the agency with the Secretary of State; and

(c) Keep and make available the mailing list required by ORS 183.335 (8).

(3) An order shall not be effective as to any person or party unless it is served upon the person or party either personally or by mail. This subsection is not applicable in favor of any person or party who has actual knowledge of the order.

(4) An order is not final until it is reduced to writing.

SECTION 2. ORS 183.335 is amended to read:

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 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 para-

graph, 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 inmates 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 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) 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.

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

(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 cochair 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 cochair 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 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.**

[(1)(a)] (2)(a) Each agency shall file *[in]* **with** the office of the Secretary of State *[a certified copy of]* each rule adopted by *[it]* **the agency.**

(b) *[Notwithstanding the provisions of paragraph (a) of this subsection]* **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.

[(2)] (3) Each rule is effective upon filing as required by subsection [(1)] (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.

[(3)] (4) When a rule is amended or repealed by an agency, the agency shall file *[a certified copy of]* the amendment or notice of repeal with the Secretary of State *[who shall appropriately amend the compilation required by ORS 183.360 (1)]*.

[(4)] (5) 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.

[(5)] (6) *[No]* **A rule *[of which a certified copy is required to be filed shall be]* is not** valid or effective against any person or party until *[a certified copy]* **the rule** is filed 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 *[such]* **the** case and subsequent cases of like nature the agency may rely upon *[such]* **the** decision in disposition of later cases.

[(6)] (7) 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.

[(7)] (8) 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.

[(8)] (9) All fees collected under subsection [(7)] (8) 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) 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 183.360 is amended to read:

183.360. (1) The Secretary of State shall compile, index and publish all rules adopted by each agency. The compilation shall be supplemented or revised as often as necessary *[and at least once every six months]*. Such compilation supersedes any other rules. The Secretary of State may make such compilations of other material published in the bulletin as are desirable. The Secretary of State may copyright the compilations prepared under this subsection, and may establish policies for the revision, clarification, classification, arrangement, indexing, printing, binding, publication, sale and distribution of the compilations.

(2)[(a)] The Secretary of State has discretion to omit from the compilation, **if published in print**, rules the publication of which would be unduly cumbersome or expensive if the rule in printed or processed form is made available on application to the adopting agency, and if the compilation contains a notice summarizing the omitted rule and stating how a copy *[thereof]* **of the omitted rule** may be obtained. In preparing the compilation the Secretary of State *[shall]* **may** not alter the sense, meaning, effect or substance of any rule, but may renumber sections and parts of sections of the rules, change the wording of headnotes, rearrange sections, change reference numbers to agree with renumbered chapters, sections or other parts, substitute the proper subsection, section or chapter

or other division numbers, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors.

[(b) The Secretary of State may by rule prescribe requirements, not inconsistent with law, for the manner and form for filing of rules adopted or amended by agencies. The Secretary of State may refuse to accept for filing any rules which do not comply with those requirements.]

(3) The Secretary of State shall publish at least at monthly intervals a bulletin *[which]* **that**:

(a) Briefly indicates the agencies that are proposing to adopt, amend or repeal a rule, the subject matter of the rule and the name, address and telephone number of an agency officer or employee from whom information and a copy of any proposed rule may be obtained;

(b) Contains the text or a brief description of all rules filed under ORS 183.355 since the last bulletin indicating the effective date of the rule;

(c) Contains executive orders of the Governor; and

(d) Contains orders issued by the Director of the Department of Revenue under ORS 305.157 extending tax statutes of limitation.

(4) Courts shall take judicial notice of rules and executive orders filed with the Secretary of State.

(5) The compilation required by subsection (1) of this section shall be titled Oregon Administrative Rules and may be cited as "OAR" with appropriate numerical indications.

(6) The Secretary of State may publish the compilation and bulletin required by this section in print, or by placing the compilation and bulletin on the Internet.

SECTION 5. ORS 183.365 is amended to read:

183.365. (1) Pursuant to ORS 183.360, the Secretary of State shall publish in electronic form administrative rules adopted or amended by state agencies and make the information available to the public and members of the Legislative Assembly.

(2) The Secretary of State shall determine the most cost-effective format and procedures for the timely release of the information described in subsection (1) of this section in electronic form.

(3) Pursuant to ORS *[183.360 (2)(b)]* **183.355**, the Secretary of State shall establish requirements for filing administrative rules adopted or amended by state agencies for entry into computer networks for the purpose of subsection (1) of this section.

(4) Although each state agency is responsible for its information resources, centralized information resource management must also exist to:

(a) Provide public access to the information described in subsection (1) of this section;

(b) Provide technical assistance to state agencies; and

(c) Ensure that the information resources needed to implement subsection (1) of this section are addressed along with the needs of the individual agencies.

(5) Personal information concerning a person who accesses the information identified in subsection (1) of this section may be maintained only for the purpose of providing service to the person.

(6) No fee or other charge may be imposed by the Secretary of State as a condition of accessing the information identified in subsection (1) of this section.

(7) No action taken pursuant to this section shall be deemed to alter or relinquish any copyright or other proprietary interest or entitlement of the State of Oregon relative to any of the information made available pursuant to subsection (1) of this section.

SECTION 6. ORS 183.405 is amended to read:

183.405. (1) Not later than five years after adopting a rule, an agency shall review the rule for the purpose of determining:

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

(b) Whether the anticipated fiscal impact of the rule was underestimated or overestimated;

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

(d) Whether there is continued need for the rule.

(2) An agency shall utilize available information in complying with the requirements of subsection (1) of this section.

(3) An agency shall provide a report on each review of a rule conducted under this section:

(a) To the Secretary of State; and

~~[(3)]~~ **(b)** If ~~[an]~~ the agency appoints an advisory committee pursuant to ORS 183.333 for consideration of a rule subject to the requirements of this section, ~~[the agency shall provide]~~ **to** the advisory committee ~~[with a report on a review of the rule conducted under this section].~~

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

(5) The provisions of this section do not apply to:

(a) Rules adopted to implement court orders or the settlement of civil proceedings;

(b) Rules that adopt federal laws or rules by reference;

(c) Rules adopted to implement legislatively approved fee changes; or

(d) Rules adopted to correct errors or omissions.

SECTION 7. ORS 183.715 is amended to read:

183.715. ~~[(1)]~~ **If** a state agency ~~[that]~~ adopts, **amends or repeals** a rule, **the Secretary of State** shall **electronically** submit a copy of the adopted, **amended or repealed** rule to the Legislative Counsel within 10 days after the agency files ~~[a certified copy of]~~ the rule in the office of the Secretary of State as provided in ORS 183.355 ~~[(1)]~~. The ~~[copy]~~ **electronic transmission** of an amended rule that is submitted to the Legislative Counsel must 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.

~~[(2) Notwithstanding subsection (1) of this section, an agency adopting a rule incorporating published standards or a specialty code by reference is not required to file a copy of those standards with the Legislative Counsel if:]~~

~~[(a) The standards or a specialty code adopted are unusually voluminous and costly to reproduce; and]~~

~~[(b) The rule filed with the Legislative Counsel identifies the location of the standards or a specialty code so incorporated and makes them available to the Legislative Counsel on the request of the Legislative Counsel.]~~

SECTION 8. ORS 561.510 is amended to read:

561.510. (1) The Director of Agriculture may adopt rules under ORS chapter 183 declaring a quarantine if the director believes that any animals, fowls, bees, fruits, vegetables, plants, parts of plants or seeds within any area or section are diseased or infested with a pest, or that any area or section is infested with a weed, and that the disease, infestation or weed is likely to spread and become detrimental to the plant or animal life of this state or to the health of citizens of the state. The director may declare the quarantine for any area or section for which the Secretary of Agriculture of the United States has not determined that a quarantine is necessary and established a quarantine. The quarantine may prohibit:

(a) The movement of diseased or infested animals, fowls, bees, fruits, vegetables, plants, parts of plants or seeds or of weeds or weed seeds; or

(b) Articles that might contain the disease, infestation, weeds or weed seeds or that might otherwise spread the disease, infestation or weeds into the state from outside the state or from one area or section of the state to another area or section within or outside the state.

(2) Except as provided in subsection (3) of this section, the director shall hold at least one public hearing in this state before adopting a rule that declares a quarantine under this section.

(3) If an emergency exists and postponement of the effective date of the quarantine would result in serious prejudice to the public health, safety or welfare, or to the health, safety or welfare of the affected parties, the director may make the quarantine effective immediately as authorized by ORS 183.355 ~~[(2)(b)]~~ **(3)(b)**.

SECTION 9. ORS 183.362 and 183.725 are repealed.

SECTION 10. This 2017 Act takes effect on the 91st day after the date on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

Passed by Senate April 6, 2017

Repassed by Senate June 19, 2017

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 14, 2017

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

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Dennis Richardson, Secretary of State