

FISCAL IMPACT OF PROPOSED LEGISLATION

81st Oregon Legislative Assembly – 2021 Regular Session
Legislative Fiscal Office

Measure: HB 2334 - 1

*Only Impacts on Original or Engrossed
Versions are Considered Official*

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Measure Description:

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

Government Unit(s) Affected:

Statewide: Oregon Department of Fish and Wildlife (ODFW), Oregon Health Authority (OHA), Department of Administrative Services (DAS)

Summary of Fiscal Impact:

Costs related to the measure are indeterminate at this time - See analysis.

Analysis:

HB 2334 with the -1 amendment requires that prior to the adoption, amendment, or repeal of a temporary or emergency administrative rule, an agency must prepare a statement considering any significant economic effect of the action on businesses, including a cost of compliance effect on affected small businesses. If the statement of cost of compliance effect on small businesses for temporary or permanent rulemaking shows that a rule has a significant adverse effect upon small business, the agency must reduce the impact on small business by one of the ways specified in the measure. The measure applies to notices of rulemaking actions issued on or after January 1, 2022. The -1 amendment stipulates that the statement of cost of compliance effect on small businesses must include a finding as to whether a rule will have a significant adverse effect upon small businesses. The -1 amendment does not change the original indeterminate fiscal impact analysis.

Under current law and practice, state agencies are only required to provide a statement of fiscal impact including a cost of compliance effect on small businesses prior to permanent rulemaking. With passage of this measure, this statement is also required for temporary and emergency administrative rules.

For the majority of state agencies, the fiscal impact of this measure is anticipated to be minimal. Each agency will use existing staff and resources to handle the increase in rulemaking workload as well as potential costs related to Department of Justice rule writing assistance and programming costs to modify rulemaking systems.

However, the overall fiscal impact of this measure is indeterminate depending on the exact actions required by agencies if a statement of cost shows that a rule has a significant adverse effect on small businesses. The measure states that if a statement of cost shows that a rule has a significant adverse effect upon small business, the agency must reduce the economic impact of the rule on small business by: (1) Establishing differing compliance or reporting requirements or time tables for small business; (2) Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business; (3) Utilizing objective criteria for standards, exempting small businesses from any or all requirements of the rule or adopting a less intrusive or less costly rule applicable to small business.

Oregon Department of Fish and Wildlife (ODFW)

Passage of this measure could have a potential impact on ODFW revenues. Under current practice, ODFW staff completes a statement of cost for approximately 20-30 permanent rule changes annually. With passage of this

measure, staff will be expected to complete the statement of cost for approximately 130-190 temporary rules, the majority of which relate to fisheries management. If ODFW's temporary rules process is slowed resulting in fisheries not opening at the earliest possible date, this could affect participation opportunities. Any resulting reduction in opportunity could potentially lead to less license revenues.

Department of State Lands (DSL)

If a statement of cost shows that rules assessing fees for services provided by DSL has a significant adverse effect upon small business, passage of this measure could impact the agency's ability to use cost recovery models to fund program and services.

Oregon Health Authority (OHA)

Passage of this measure could result in additional costs for alternate data processing and storage for OHA. However, the costs are indeterminate at this time. OHA's Health Policy & Analytics Division (HPA) operates the All Payer All Claims Database (APAC) by Pharmacy Benefits Managers (PBM) and Third Party Administrators (TPA). This measure has the potential to impact APAC reporting. It is likely many of the 59 PBM organizations and nine TPAs have fewer than 50 employees. This measure could require OHA to stagger the implementation of revisions to data file formats that PBMs and TPAs are required to submit to APAC. This would limit data usability for the time period covered and through that limit the ability of policy and program decisions to be based on data. The APAC program would need to maintain an alternate data file layout and validation rules based on the content delayed for small businesses.

Department of Administrative Services (DAS)

DAS reports that with passage of this bill, the agency may need to establish a limited duration Operations and Policy Analyst 3 position to assist agencies with implementing a standardized process to comply with the provisions of the measure. DAS estimates the cost of this position to be \$221,030 Other Funds for the 2021-23 biennium.

This measure warrants a subsequent referral to the Joint Committee on Ways and Means for consideration of General Fund impact.