

# House Bill 2993

Sponsored by Representative SMITH WARNER (at the request of Reimagine Oregon)

## 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**.

Requires agency to appoint advisory committee to represent interests of persons likely to be affected by proposed rule.

## A BILL FOR AN ACT

1  
2 Relating to administrative rules; creating new provisions; and amending ORS 183.333, 183.335,  
3 183.405 and 183.407.

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

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

6 183.333. (1) The Legislative Assembly finds and declares that it is the policy of this state that  
7 whenever possible the public be involved in the development of public policy by agencies and in the  
8 drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maxi-  
9 mum extent possible before giving notice of intent to adopt a rule. The agency [may] **shall** appoint  
10 an advisory committee that will represent the interests of persons likely to be affected by the rule,  
11 [or] **and may** use any other means of obtaining public views that will assist the agency in drafting  
12 the rule.

13 (2) Any agency in its discretion may develop a list of interested parties and inform those parties  
14 of any issue that may be the subject of rulemaking and invite the parties to make comments on the  
15 issue.

16 (3) *[If an agency appoints an advisory committee for consideration of a rule under subsection (1)*  
17 *of this section,]* The agency shall seek the [committee's] recommendations **of the advisory commit-**  
18 **tee appointed under subsection (1) of this section** on whether the rule will have a fiscal impact,  
19 what the extent of that impact will be and whether the rule will have a significant adverse impact  
20 on small businesses. If the committee indicates that the rule will have a significant adverse impact  
21 on small businesses, the agency shall seek the committee's recommendations on compliance with  
22 ORS 183.540.

23 (4) An agency shall consider an advisory committee's recommendations provided under sub-  
24 section (3) of this section in preparing the statement of fiscal impact required by ORS 183.335  
25 (2)(b)(E).

26 *[(5) If an agency does not appoint an advisory committee for consideration of a permanent rule*  
27 *under subsection (1) of this section and 10 or more persons likely to be affected by the rule object to*  
28 *the agency's statement of fiscal impact as required by ORS 183.335 (2)(b)(E) or an association with at*  
29 *least 10 members likely to be affected by the rule objects to the statement, the agency shall appoint a*  
30 *fiscal impact advisory committee to provide recommendations on whether the rule will have a fiscal*  
31 *impact and what the extent of that impact will be. An objection under this subsection must be made*

**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.

1 *not later than 14 days after the notice required by ORS 183.335 (1) is given. If the agency determines*  
 2 *that the statement does not adequately reflect the rule's fiscal impact, the agency shall extend the period*  
 3 *for submission of data or views under ORS 183.335 (3)(a) by at least 20 days. The agency shall include*  
 4 *any recommendations from the committee in the record maintained by the agency for the rule.]*

5 [(6)] (5) An agency may appoint the Small Business Rules Advisory Committee established in  
 6 ORS 183.407 as the advisory committee [*or fiscal impact advisory committee*] for purposes of this  
 7 section.

8 [(7) Subsection (5) of this section does not apply to any rule adopted by an agency to comply with  
 9 a judgment or a settlement of a judicial proceeding.]

10 [(8)] (6) [*If an agency is required by law to appoint an advisory committee under this section,*  
 11 *the*] **An** agency may not appoint an officer, employee or other agent of the agency to serve as a  
 12 member of the advisory committee **under subsection (1) of this section.**

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

14 183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice  
 15 of its intended action:

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

18 (b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

19 (c) At least 28 days before the effective date, to persons who have requested notice pursuant to  
 20 subsection (8) of this section; and

21 (d) Delivered only by electronic mail, at least 49 days before the effective date, to the persons  
 22 specified in subsection (15) of this section.

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

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

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

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

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

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

36 (C) A statement of the need for the rule and a statement of how the rule is intended to meet the  
 37 need;

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

42 (E) A statement of fiscal impact identifying state agencies, units of local government and the  
 43 public that may be economically affected by the adoption, amendment or repeal of the rule and an  
 44 estimate of that economic impact on state agencies, units of local government and the public. In  
 45 considering the economic effect of the proposed action on the public, the agency shall utilize avail-

1 able information to project any significant economic effect of that action on businesses which shall  
2 include a cost of compliance effect on small businesses affected. For an agency specified in ORS  
3 183.530, the statement of fiscal impact shall also include a housing cost impact statement as de-  
4 scribed in ORS 183.534; **and**

5 *[(F) If an advisory committee is not appointed under the provisions of ORS 183.333, an explanation*  
6 *as to why no advisory committee was used to assist the agency in drafting the rule; and]*

7 *[(G)]* (F) A request for public comment on whether other options should be considered for  
8 achieving the rule's substantive goals while reducing the negative economic impact of the rule on  
9 business.

10 (c) The Secretary of State may omit the information submitted under paragraph (b) of this sub-  
11 section from publication in the bulletin referred to in ORS 183.360.

12 (d) When providing notice of an intended action under subsection (1)(c) of this section, the  
13 agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an  
14 explanation of how the person may acquire a copy of the rule. The copy of an amended rule shall  
15 show all changes to the rule by striking through material to be deleted and underlining all new  
16 material, or by any other method that clearly shows all new and deleted material.

17 (3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons  
18 reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon  
19 request received from 10 persons or from an association having not less than 10 members before the  
20 earliest date that the rule could become effective after the giving of notice pursuant to subsection  
21 (1) of this section. An agency holding a hearing upon a request made under this subsection shall give  
22 notice of the hearing at least 21 days before the hearing to the person who has requested the  
23 hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the  
24 persons specified in subsection (15) of this section. The agency shall publish notice of the hearing  
25 in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall  
26 consider fully any written or oral submission.

27 (b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection,  
28 and the rule for which the hearing is to be conducted applies only to a limited geographical area  
29 within this state, or affects only a limited geographical area within this state, the hearing shall be  
30 conducted within the geographical area at the place most convenient for the majority of the resi-  
31 dents within the geographical area. At least 14 days before a hearing conducted under this para-  
32 graph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and  
33 in a newspaper of general circulation published within the geographical area that is affected by the  
34 rule or to which the rule applies. If a newspaper of general circulation is not published within the  
35 geographical area that is affected by the rule or to which the rule applies, the publication shall be  
36 made in the newspaper of general circulation published closest to the geographical area.

37 (c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the  
38 State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by adults  
39 in custody in the proposed adoption, amendment or repeal of any rule to written submissions.

40 (d) If requested by at least five persons before the earliest date that the rule could become ef-  
41 fective after the agency gives notice pursuant to subsection (1) of this section, the agency shall  
42 provide a statement that identifies the objective of the rule and a statement of how the agency will  
43 subsequently determine whether the rule is in fact accomplishing that objective.

44 (e) An agency that receives data or views concerning proposed rules from interested persons  
45 shall maintain a record of the data or views submitted. The record shall contain:

1 (A) All written materials submitted to an agency in response to a notice of intent to adopt,  
2 amend or repeal a rule.

3 (B) A recording or summary of oral submissions received at hearings held for the purpose of  
4 receiving those submissions.

5 (C) Any public comment received in response to the request made under subsection (2)(b)(G) of  
6 this section and the agency's response to that comment.

7 (D) Any statements provided by the agency under paragraph (d) of this subsection.

8 (4) Upon request of an interested person received before the earliest date that the rule could  
9 become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall  
10 postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the  
11 requesting person an opportunity to submit data, views or arguments concerning the proposed  
12 action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant  
13 to subsection (5) of this section.

14 (5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or sus-  
15 pend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds  
16 practicable, if the agency prepares:

17 (a) A statement of its findings that its failure to act promptly will result in serious prejudice to  
18 the public interest or the interest of the parties concerned and the specific reasons for its findings  
19 of prejudice;

20 (b) A citation of the statutory or other legal authority relied upon and bearing upon the  
21 promulgation of the rule;

22 (c) A statement of the need for the rule and a statement of how the rule is intended to meet the  
23 need;

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

27 (e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS  
28 183.534.

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

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

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

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

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

40 (c) Correcting spelling;

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

43 (e) Correcting statutory or rule references; or

44 (f) Correcting addresses or telephone numbers referred to in the rules.

45 (8)(a) Any person may request in writing that an agency send to the person copies of the

1 agency's notices of intended action issued under subsection (1) of this section. The person must  
 2 provide an address where the person elects to receive notices. The address provided may be a postal  
 3 mailing address or, if the agency provides notice by electronic mail, may be an electronic mailing  
 4 address.

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

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

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

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

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

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

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

26 (10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.161, 279A.250 to  
 27 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280,  
 28 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545,  
 29 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and  
 30 279C.800 to 279C.870 relating to public contracts and purchasing.

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

35 (b) In addition to all other requirements with which rule adoptions must comply, a rule other  
 36 than a rule amended for a purpose described in subsection (7) of this section is not valid if the rule  
 37 has not been submitted to the Legislative Counsel in the manner required by ORS 183.355 and  
 38 183.715.

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

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

1 (b) An agency may use an amended filing to correct a failure to include a fiscal impact state-  
 2 ment in a notice of intended action, as required by subsection (2)(b)(E) of this section, or to correct  
 3 an inaccurate fiscal impact statement, only if the agency developed the fiscal impact statement with  
 4 the assistance of an advisory committee [*or fiscal impact advisory committee*] appointed under ORS  
 5 183.333.

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

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

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

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

20 (b) If the proposed adoption, amendment or repeal does not result from legislation that was  
 21 passed within two years before notice is given under subsection (1) of this section, notice shall be  
 22 given to the chair or cochairs of any interim or session committee with authority over the subject  
 23 matter of the rule.

24 (c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given  
 25 to the Speaker of the House of Representatives and to the President of the Senate who are in office  
 26 on the date the notice is given.

27 (16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be  
 28 affected by a proposed adoption, amendment or repeal, the committees receiving notice under sub-  
 29 section (15) of this section shall review the proposed adoption, amendment or repeal for compliance  
 30 with the legislation from which the proposed adoption, amendment or repeal results.

31 (b) The committees shall submit their comments on the proposed adoption, amendment or repeal  
 32 to the agency proposing the adoption, amendment or repeal.

33 **SECTION 3.** ORS 183.405 is amended to read:

34 183.405. (1) Not later than five years after adopting a rule, an agency shall review the rule for  
 35 the purpose of determining:

- 36 (a) Whether the rule has had the intended effect;
- 37 (b) Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
- 38 (c) Whether subsequent changes in the law require that the rule be repealed or amended;
- 39 (d) Whether there is continued need for the rule; and
- 40 (e) What impacts the rule has on small businesses.

41 (2) Upon request of an agency, the Small Business Rules Advisory Committee established in ORS  
 42 183.407 may agree to complete the review and reporting required by this section for the agency.

43 (3) An agency or the Small Business Rules Advisory Committee shall utilize available informa-  
 44 tion in complying with the requirements of subsection (1) of this section.

45 (4) An agency or the Small Business Rules Advisory Committee shall provide a report on each

1 review of a rule conducted under this section:

2 (a) To the Secretary of State;

3 (b) To the Small Business Rules Advisory Committee, unless the committee completed the review  
4 under subsection (2) of this section; and

5 *[(c) If the agency appointed an advisory committee pursuant to ORS 183.333 for consideration of  
6 a rule subject to the requirements of this section, to the advisory committee.]*

7 **(c) To the advisory committee appointed under ORS 183.333.**

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

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

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

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

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

13 (d) Rules adopted to correct errors or omissions.

14 (7) The Secretary of State shall compile the reports submitted under this section during each  
15 calendar year and submit an annual report to the Legislative Assembly in the manner required by  
16 ORS 192.245 no later than February 1 of the following year.

17 **SECTION 4.** ORS 183.407 is amended to read:

18 183.407. (1) The Small Business Rules Advisory Committee is established to serve as an advisory  
19 committee for agencies adopting new administrative rules and to review the effectiveness of existing  
20 administrative rules.

21 (2) The committee consists of nine members as follows:

22 (a) Two representatives of small businesses appointed by the Governor;

23 (b) Two representatives of small businesses appointed by the President of the Senate;

24 (c) Two representatives of small businesses appointed by the Speaker of the House;

25 (d) A representative of small businesses appointed by the Office of Small Business Assistance  
26 established in ORS 56.203;

27 (e) A representative of state agencies appointed by the Director of the Oregon Department of  
28 Administrative Services; and

29 (f) A member who is an expert in the rulemaking process appointed by the State Archivist.

30 (3) Upon request of an agency, the committee shall serve as the advisory committee *[or fiscal  
31 impact advisory committee]* for reviewing an agency's proposed administrative rules under ORS  
32 183.333.

33 (4) Upon request of an agency, the committee may agree to complete the rules review and re-  
34 porting required by ORS 183.405 in place of the agency.

35 (5) Members of the committee shall be appointed to serve for terms of two years, but a member  
36 serves at the pleasure of the appointing authority. The appointing authority shall appoint a person  
37 to fill any vacancy on the committee for the expired term. A member may be reappointed to the  
38 committee.

39 (6) The members of the committee shall elect a chairperson from among the members of the  
40 committee. In the absence of a chairperson, the member appointed by the State Archivist shall serve  
41 as acting chairperson.

42 (7) A majority of the members of the committee constitutes a quorum for the transaction of  
43 business.

44 (8) The committee shall meet upon the call of the chairperson or upon a request of a majority  
45 of the members of the committee. The committee may meet by phone or video conference with at

1 least 24 hours' public notice.

2 (9) The State Archives shall provide administrative support to the committee.

3 (10) Members of the committee are not entitled to compensation, but may be reimbursed from  
4 funds available to the State Archives for actual and necessary travel and other expenses incurred  
5 by them in the performance of their official duties in the manner and amounts provided for in ORS  
6 292.495.

7 **SECTION 5. The amendments to ORS 183.333, 183.335, 183.405 and 183.407 by sections 1**  
8 **to 4 of this 2021 Act apply to notices of intent to adopt rules filed on or after the effective**  
9 **date of this 2021 Act.**

10