

# Senate Bill 42

Sponsored by Senator FINDLEY, Representative OWENS (at the request of Oregon Business and Industry) (Pre-session 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**.

Modifies provisions relating to fiscal impact statements for administrative rules.

Requires agencies to report to Legislative Fiscal Officer on fiscal impacts of administrative rules as part of the process of presenting budget requests during each odd-numbered year regular session of Legislative Assembly.

## A BILL FOR AN ACT

1 Relating to administrative rules; creating new provisions; and amending ORS 183.335.

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

3 **SECTION 1.** ORS 183.335, as amended by section 6, chapter 97, Oregon Laws 2022, is amended  
4 to read:

5 183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice  
6 of its intended action:

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

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

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

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

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

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

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

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

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

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

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

29 (D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by  
30

**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 the agency in considering the need for and in preparing the rule, and a statement of the location  
2 at which those documents are available for public inspection. The list may be abbreviated if neces-  
3 sary, and if so abbreviated there shall be identified the location of a complete list;

4 (E) A statement of fiscal impact identifying state agencies, units of local government and the  
5 public that may be economically affected by the adoption, amendment or repeal of the rule and an  
6 estimate of that economic impact on state agencies, units of local government and the public. In  
7 considering the economic effect of the proposed action on the public, the agency shall utilize avail-  
8 able information to project any significant economic effect of that action on businesses which shall  
9 include a cost of compliance effect on small businesses affected, **and shall consider resultant job**  
10 **loss and consumer cost impacts.** For an agency specified in ORS 183.530, the statement of fiscal  
11 impact shall also include a housing cost impact statement as described in ORS 183.534. **An agency**  
12 **may not state that the fiscal impact of the adoption, amendment or repeal of a rule is inde-**  
13 **terminate if the rule is expected to have a total fiscal impact on all parties that exceeds**  
14 **\$100,000;**

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

16 (G) If an advisory committee is not appointed under the provisions of ORS 183.333, an explana-  
17 tion as to why no advisory committee was used to assist the agency in drafting the rule; and

18 (H) A request for public comment on whether other options should be considered for achieving  
19 the rule's substantive goals while reducing the negative economic impact of the rule on business.

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

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

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

37 (b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection,  
38 and the rule for which the hearing is to be conducted applies only to a limited geographical area  
39 within this state, or affects only a limited geographical area within this state, the hearing shall be  
40 conducted within the geographical area at the place most convenient for the majority of the resi-  
41 dents within the geographical area. At least 14 days before a hearing conducted under this para-  
42 graph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and  
43 in a newspaper of general circulation published within the geographical area that is affected by the  
44 rule or to which the rule applies. If a newspaper of general circulation is not published within the  
45 geographical area that is affected by the rule or to which the rule applies, the publication shall be

1 made in the newspaper of general circulation published closest to the geographical area.

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

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

9 **(e) If requested by at least 10 persons or by an association having not less than 10**  
10 **members before the earliest date that the rule could become effective after the giving of**  
11 **notice pursuant to subsection (1) of this section, the agency shall, before the rule becomes**  
12 **effective, provide a third-party analysis of the fiscal impact of the rule, as described in sub-**  
13 **section (2)(b)(E) of this section. The analysis required by this paragraph must be supported**  
14 **by substantial evidence.**

15 [(e)] (f) An agency that receives data or views concerning proposed rules from interested per-  
16 sons shall maintain a record of the data or views submitted. The record shall contain:

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

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

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

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

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

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

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

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

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

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

43 (e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS  
44 183.534.

45 (6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary

1 and may be effective for a period of not longer than 180 days. The adoption of a rule under this  
2 subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to  
3 (4) of this section.

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

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

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

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

11 (c) Correcting spelling;

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

14 (e) Correcting statutory or rule references;

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

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

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

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

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

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

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

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

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

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

43 (10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.161, 279A.250 to  
44 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280,  
45 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545,

1 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and  
2 279C.800 to 279C.870 relating to public contracts and purchasing.

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

7 (b) In addition to all other requirements with which rule adoptions must comply, a rule other  
8 than a rule amended for a purpose described in subsection (7) of this section is not valid if the rule  
9 has not been submitted to the Legislative Counsel in the manner required by ORS 183.355 and  
10 183.715.

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

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

18 (b) An agency may use an amended filing to correct a failure to include a fiscal impact state-  
19 ment in a notice of intended action, as required by subsection (2)(b)(E) of this section, or to correct  
20 an inaccurate fiscal impact statement, only if the agency developed the fiscal impact statement with  
21 the assistance of an advisory committee or fiscal impact advisory committee appointed under ORS  
22 183.333.

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

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

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

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

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

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

44 (16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be  
45 affected by a proposed adoption, amendment or repeal, the committees receiving notice under sub-

1 section (15) of this section shall review the proposed adoption, amendment or repeal for compliance  
2 with the legislation from which the proposed adoption, amendment or repeal results.

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

5 **SECTION 2. (1) As used in this section, “agency” and “rule” have the meanings given**  
6 **those terms in ORS 183.310.**

7 **(2) As part of the process of presenting budget requests during each odd-numbered year**  
8 **regular session of the Legislative Assembly, an agency shall report to the Legislative Fiscal**  
9 **Officer detailing the fiscal impact of rules adopted, amended or repealed by the agency in the**  
10 **current biennium. The report must describe rules adopted by the agency that required or**  
11 **caused:**

12 (a) An increase in fees charged by the agency;

13 (b) Transfer of funds available to the agency of more than \$50,000;

14 (c) Rededication of more than .5 full-time employees; or

15 (d) A need for new state resources in the next biennium of \$100,000 or more.

16 **SECTION 3. The amendments to ORS 183.335 by section 1 of this 2023 Act apply to rules**  
17 **for which notice of intended action is given on or after the effective date of this 2023 Act.**

18