

## HB 2692 -1, -3, -4, -5 STAFF MEASURE SUMMARY

### House Committee On Rules

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**Sub-Referral To:** Joint Committee On Ways and Means

**Meeting Dates:** 2/12, 5/28

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#### WHAT THE MEASURE DOES:

The measure makes changes to the Administrative Procedures Act, including revising agency rulemaking procedures and requiring the appropriate court in the judicial review of contested cases or other orders to set aside or remand the order if the court finds that the agency action or the findings or conclusions underlying an order were arbitrary or capricious. The changes apply to rules for which an agency gives notice of intended action and to orders served on or after January 1, 2026.

#### Detailed Summary

##### Rulemaking

- Requires the appointment of a rules advisory committee (RAC) when the proposed rule will result in new requirements, changes to compliance obligations, or increased costs for persons regulated by the agency.
- Requires the RAC to contain an equal number of members who represent regulated entities as those who do not represent regulated entities.
- Requires RAC meetings to be open to the public and include the opportunity for public comment.
- Changes notice requirements to be a certain number of days prior to the date the rule is filed with the Secretary of State, not the effective date.
- Changes the effective date of each permanent rule adopted, amended, or repealed to be 30 days after the date filed with the SOS, unless a later date is specified or required.
- Requires agencies to submit a summary of public comments received and the agency's response to common public comments when filing a permanent rule with the SOS.
- Requires the agency to include in its notice of intended action:
  - A detailed description of the problem the agency is attempting to solve with the rule and how the rule will solve the problem in its notice of intended action.
  - The cost of compliance effect on small businesses, currently described in ORS 183.336, along with a new analysis of the opportunity costs associated with compliance in the statement of fiscal impact.
  - A description of alternative options considered in development the rule.
- Requires an agency to hold an oral hearing and give notice in the Oregon Bulletin 15 days before the hearing.
- Requires a report to the Joint Committee on Ways and Means if the statement of fiscal impact indicates that the proposed adoption, amendment, or repeal may have an economic impact of more than \$250,000 on any individual or more than \$5 million on the public in total.
- Requires the Oregon Department of Administrative Services, Department of Justice, and Business Development Department to jointly publish a guide for the public on administrative rules.

##### Judicial Review

- Requires the Court of Appeals, which has jurisdiction for the judicial review of contested cases, to set aside or remand the order if the court finds that the agency action or the findings or conclusions underlying an order were arbitrary or capricious.
- Requires the circuit court that has jurisdiction for the judicial review of orders other than contested cases to set aside or remand the order if the court finds that the agency action or the findings or conclusions underlying an order were arbitrary or capricious.

*Fiscal impact: May have fiscal impact, but no statement yet issued*

*Revenue impact: May have revenue impact, but no statement yet issued*

**ISSUES DISCUSSED:**

- A Legislative Counsel (LC) opinion about a rule as opposed to the LC review of a rule
- Equal representation and example of Management-Labor Advisory Committee
- Effective date of rules and time for business implementation
- Economic impacts versus other considerations
- Information on agency interpretation and policy changes
- Number of rulemaking notices
- Standards for not doing rulemaking
- Standardizing processes versus flexibility and efficiency for agencies

**EFFECT OF AMENDMENT:**

-1 The amendment requires the appropriate court in the judicial review of contested cases or other orders to remand the order if the court finds that the agency's exercise of discretion is inconsistent with a past interpretation of a rule by the agency, unless the interpretation, or an officially stated position or past practice, was changed by rule before the agency's exercise of discretion. It adds similar requirements for the appropriate court to set aside or remand an order in the judicial review of: (1) the decisions of the Columbia River Gorge Commission; (2) a decision by a state contracting agency on a protest of a contract award; and (3) an order of the Department of Transportation after a hearing related to implied consent law.

-3 The amendment changes the requirements for a rules advisory committee (RAC) to include representatives of entities regulated by the agency and by the program within the agency, and, if the RAC includes representatives of unregulated entities, the number may not exceed the number of representatives of regulated entities. It requires a RAC process to allow for the opportunity for public comment but does not require it at every RAC meeting. It changes the required content of the statement of fiscal impact to include a summary of possible opportunity costs associated with compliance and allows that to consist of publishing comments provided to the agency. It removes the requirement for an agency to hold an oral hearing, reinstates existing requirements for requesting a hearing, and provides that an agency that fails to provide the required 15-day notice must reschedule the hearing and extend the public comment period by 15 days. It requires a report to the Joint Committee on Ways and Means if specified financial impact totals are in a single biennium. It also requires the public guide to administrative rules to be informed by feedback from the public.

-4 The amendment makes changes to rules advisory committee (RAC) appointment procedures, membership requirements, and public comment opportunities. It revises the notice and statement of fiscal impact content requirements, reinstates existing law for requesting an oral hearing, and sets requirements for noticing an oral hearing.

Detailed Summary

- Requires an agency to provide notice to its interested parties list and post on its website a request for interest in a rules advisory committee (RAC) at least 14 days before it 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 regulated persons.
- Requires an agency who receives a request from a person or association of persons regulated by the agency within the 14-day period to appoint a RAC, otherwise it may proceed with rulemaking without appointing a RAC.
- Changes the membership requirements of a RAC to include representatives of entities regulated by the agency and by the program within the agency, and, if the RAC includes representatives of unregulated

entities, the number may not exceed the number of representatives of regulated entities.

- Requires a RAC process to allow for the opportunity for public comment but does not require it at every RAC meeting.
- Makes the requirement for including a detailed description of the problem in the rule notice to be only when applicable.
- Changes the required content of the statement of fiscal impact to include a summary of possible opportunity costs associated with compliance and allows that to consist of publishing comments provided to the agency.
- Removes the requirement for an agency to hold an oral hearing, reinstates existing requirements for requesting a hearing, establishes requirements for an agency to notice a requested hearing, and provides that an agency that fails to provide the required 15-day notice must reschedule the hearing and provide proper notice.
- Requires a report to the Joint Committee on Ways and Means if specified financial impact totals are in a single biennium.
- Changes the Oregon Business Development Department to the Office of Small Business Assistance in the requirement to publish the guide to administrative rules.

-5 The amendment makes changes to the rules advisory committee (RAC) appointment procedures, membership requirements, and public comment opportunities. It revises content requirements for the notice and statement of fiscal impact, reinstates existing law for requesting an oral hearing, and sets requirements for noticing an oral hearing. The -5 amendments are the -4 amendments with one change: an agency is required to post a public notice on its website, not a "public request," to determine interest in a RAC.

#### Detailed Summary

- Requires an agency to provide notice to its interested parties list and post a public notice on its website to determine interest in a RAC at least 14 days before it gives notice of the intent to adopt a permanent rule that will result in new requirements, changes to compliance obligations, or new or increased costs for regulated persons.
- Requires an agency who receives a request from a person or association of persons regulated by the agency within the 14-day period to appoint a RAC, otherwise it may proceed with rulemaking without appointing a RAC.
- Changes the membership requirements of a RAC to include representatives of entities regulated by the agency and by the program within the agency, and, if the RAC includes representatives of unregulated entities, the number may not exceed the number of representatives of regulated entities.
- Requires a RAC process to allow for the opportunity for public comment but does not require it at every RAC meeting.
- Makes the requirement for including a detailed description of the problem in the rule notice to be only when applicable.
- Changes the required content of the statement of fiscal impact to include a summary of possible opportunity costs associated with compliance and allows that to consist of publishing comments provided to the agency.
- Removes the requirement for an agency to hold an oral hearing, reinstates existing requirements for requesting a hearing, establishes requirements for an agency to notice a requested hearing, and provides that an agency that fails to provide the required 15-day notice must reschedule the hearing and provide proper notice.
- Requires a report to the Joint Committee on Ways and Means if specified financial impact totals are in a single biennium.
- Changes the Oregon Business Development Department to the Office of Small Business Assistance in the requirement to publish the guide to administrative rules.

#### **BACKGROUND:**

Administrative rules are agency directives, standards, regulations, or statements of general applicability that implement, interpret, or prescribe law or policy, or that describe the procedure or practice requirements of an agency. Rules are created by any state board, commission, department, or officer authorized to make rules or issue orders. Agencies may adopt, amend, repeal, or renumber rules, either permanently or temporarily.

Agency rulemaking is governed by ORS 183.310 to 183.690, which is the Administrative Procedures Act (APA). The APA establishes the procedures that each agency must follow when adopting, amending, or repealing a rule. The specific rulemaking process can vary by agency, but will generally include six steps: (1) seek public input; (2) complete impact analyses; (3) publish the notice of agency rulemaking; (4) opportunity for public comment; (5) file with Secretary of State; and (6) five-year rule review.

In seeking public input, agencies are required to involve the public in the drafting of administrative rules. An agency may appoint an advisory committee to represent the interests of persons likely to be affected by a proposed rule, or use other means of obtaining public input in the rule development process. If an agency does not appoint an advisory committee and 10 or more persons object to the statement of fiscal impact, the agency must appoint a fiscal impact advisory committee to provide fiscal impact recommendations.

In 2021, the Legislative Assembly enacted House Bill 2993, which required rules advisory or fiscal impact advisory committees to include members that represent the interests of affected persons and communities and required the agency to include in its rulemaking notice a statement identifying how adoption of rule will affect racial equity.