



February 12, 2025

TO: House Committee on Rules

FR: Paloma Sparks, Oregon Business & Industry

RE: Support of HB 2692 – Modernizing Rulemaking

Chair Bowman, members of the committee.

My name is Paloma Sparks, and I am executive vice president and general counsel for OBI, a statewide association representing businesses from a wide variety of industries from each of Oregon's 36 counties. In addition to being a statewide chamber of commerce, OBI is the state affiliate for the National Association of Manufacturers and the National Retail Federation. Our 1,600 member companies, more than 80% of which are small businesses, employ more than 250,000 Oregonians. Our mission is to create a healthy and prosperous economy in Oregon.

To advance this mission, OBI maintains an ongoing focus on improving Oregon's business climate, which requires improvement in the state's economic competitiveness. Over the past two years, OBI has been conducting outreach, researching Oregon's standing nationally and developing a proactive legislative agenda.

Businesses routinely point to the unpredictability and frequency of regulatory changes as the leading barrier to wanting to grow and invest in Oregon. HB 2692 is a key first step in improving Oregon's competitiveness.

The Oregon Semiconductor Competitiveness Task Force Report had this to say about the challenges of working with agencies: "Historically, DEQ rules have been understandable and reasonable. However, new programs have made them complex and challenging. DEQ engages in periodic rule updates which upends the process for businesses who feel like they understand and can comply with current rules, but rule updates provide uncertainty that they cannot easily adjust to. These also seem to come at random times."

In 2023, OBI and OSCC conducted a survey of small businesses survey, which further told us that small businesses feel the pinch of the regulatory environment. The survey revealed that 74% of small businesses felt that regulations changed so frequently it was hard to keep up; 71% said that agencies seem more interested in finding wrongdoing than helping businesses comply; and 41% said that they were considering selling or moving due to Oregon's tax or regulatory environment. Oregon's regulatory churn is particularly hard on

small and mid-size businesses where HR/Operations/Facilities/Safety/Accounting are all one person and they were already overloaded implementing last month's new rule before another new regulation was imposed on their business. Businesses will not invest in the future if the future feels so uncertain.

Between March and November 2024 over 500 permanent rulemaking notices were published. Some may not have had significant regulatory impacts, but others certainly did. Rulemaking processes and public engagement vary wildly between agencies. Here are some examples where agencies violated the spirit or letter of the Oregon Administrative Procedures Act.

- Attempting to adopt a rule before the end of the comment period;
- Limiting the number of people allowed to testify at a rulemaking hearing;
- Excluding key stakeholders from appointment to a RAC;
- Creating a new process that was not at all transparent to the public despite there being a previous public process;
- Allowing the public to observe RAC meetings but not comment or participate;
- Ignoring legislative intent;
- Telling RAC members they were prohibited from discussing the proposed rules outside of members of the RAC and the agency;
- Telling RAC members they were not allowed to disclose who the other members of the RAC were;
- Refusing to include fiscal impacts of a rule identified by businesses on the RAC;
- Clearly exceeding the plain language of statutory authority;
- Prohibiting some stakeholders from talking to agency staff; and
- Across multiple agencies – ignoring the requirement to analyze the costs of compliance for small businesses or to use the Small Business Advisory Committee that is intended to help agencies developing rules.

Obviously, we can't solve all these problems at once, but passage of HB 2692 could go a long way in improving transparency, consistency, open processes, fairness and accountability.

Transparent

The bill would require rulemaking information to be posted in a public, easy to navigate, and centralized location so the public, lawmakers and other stakeholders could access all rulemaking activity in one place. As it currently stands, one has to be an expert in each agency's unique rulemaking system and distribution list. When agencies file proposed rules, they would also have to include a detailed statement of need that includes a

description of the problem and how the rule is intended to solve that problem. And agencies would have to identify alternatives to the rule and why they were not chosen – thereby requiring the agency to give meaningful consideration to alternatives suggested by stakeholders.

Consistent

Currently, agencies and agency rule writers differ greatly in their approach to all aspects of rulemaking other than having to use the Secretary of State archives rules portal. By updating our rulemaking laws in this way, it will require all state agencies to evaluate their processes and retrain staff which we are hopeful will function as a reset for all agencies and stakeholders. Additionally, HB 2692 requires all agencies to use RACs in some form for a rule that increases penalties or creates new compliance requirements.

Open

Some agencies have very open processes and with others, you may not even know they are working on rules until the notice of proposed rules is posted. HB 2692 would require that the public be able to observe RAC meetings and that there should be a public comment period at some point in the meeting.

We have experienced some agencies refusing to provide comments received on a proposed rulemaking even when the request is submitted as a public records request. While we believe agencies should disclose comments, HB 2692 would only require that they provide summaries of question themes and agency responses to them. The Governor's office has informed OBI that they have addressed this issue and directed agencies to publish rulemaking comments but we can't count on that when the Governor's office changes hands so we have proposed it here.

Fair

Regulated entities just want a fair chance to participate and help shape the rules that will impact their businesses, but sometimes the process is dramatically imbalanced in favor of advocates rather than regulated entities. The bill mandates that they have at least equal representation on a RAC. Fiscal impact statements must be accurate and reflect the true cost of a rule, not just in terms of equipment purchased but also in opportunity costs. Businesses need time to implement new requirements – just to write new manuals or policies and educate staff, at a minimum. So no rule can go into effect any earlier than 30 days after filing the permanent rule.

Accountable

Agencies must be required to either work with small businesses in the development of rules or justify why they did not consult with small businesses as required by current law. That justification must be more than a statement that the rules “impact small businesses the same as all other businesses”. HB 2692 also proposes further accountability and budget planning measures by requiring agencies to report to the Ways & Means committee if a rule will have a cost impact of \$250,000 on an individual or more than \$5 million cost impact on the public. This would at least ensure that new, expense programs are identified and that the impact to agencies and the public are recognized. Finally, the bill aligns state and federal judicial review standards to include the ability to require agencies to present fact sufficient to find “a rational connection between the facts found and the choice made by the agency.”

Thank you for hearing this bill and our proposal to update Oregon’s rulemaking system so it works for all Oregonians.