

## HB 4073 STAFF MEASURE SUMMARY

### House Committee On Rules

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

**Meeting Dates:** 2/10

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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, other orders, and other specified decisions to set aside or remand the order if the court finds that the agency action or the findings or conclusions supporting the order were arbitrary or capricious. The measure applies to rules for which an agency gives notice of intended action and to orders served on or after January 1, 2027.

#### Detailed Summary

##### Rulemaking

- Requires an agency to appoint an advisory committee (committee) when it intends to adopt a permanent rule that will result in new requirements, changes to compliance obligations, or new or increased costs for persons regulated by the agency.
- Requires an agency to provide notice to its interested parties list and post on its website a request for interest in a committee 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 committee, otherwise it may proceed with rulemaking without appointing a committee.
- Requires the committee to include representatives of entities regulated by the agency and by the program within the agency, and, if it includes representatives of unregulated entities, the number may not exceed the number of representatives of regulated entities.
- Requires committee 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- Changes the effective date of each permanent rule adopted, amended, or repealed to be 30 days after the date filed with the SOS, unless a later date is specified or required.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 the following information 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.
  - The cost of compliance effect on small businesses, currently contained in ORS 183.336, along with a new summary of possible opportunity costs associated with compliance in the statement of fiscal impact and
  - Documentation of feedback about costs from business if it determines there is no fiscal impact on business.
  - A description of alternative options considered in development of the rule.
- Requires the agency to give notice to their list of interested parties, not just those that have requested the notice, and post the notice of any hearing on the agency's website and on the Oregon transparency website at least 21 days before the hearing.

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- Requires a report to the Joint Committee on Ways and Means and Joint Legislative Audit Committee if proposed rules increase the administrative costs of a division or department budget by 0.5 percent or more, or increases positions needed for program operation or enforcement.
- Requires the Oregon Department of Administrative Services, Department of Justice, and SOS Office of Small Business Assistance to jointly publish a guide for the public on administrative rules.

### **Judicial Review**

- Requires the courts to set aside or remand the order if it finds that the agency action or the findings or conclusions supporting the order were arbitrary or capricious, and applies this provision to the judicial review of
  - contested cases by the Court of Appeals
  - orders other than contested cases by the applicable circuit courts
  - decisions of the Columbia River Gorge Commission
  - a decision by a state contracting agency on a protest of a contract award, and
  - an order of the Department of Transportation after a hearing related to implied consent law.

### **ISSUES DISCUSSED:**

#### **EFFECT OF AMENDMENT:**

No amendment.

#### **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.