

Feb. 10, 2026

TO: Members of the House Committee on Rules

FR: Duke Shepard, Senior Policy Director

RE: Support for HB 4073

Good morning, Chair Bowman, Vice Chair Elmer, Vice Chair Pham, and Members of the Committee:

I'm Duke Shepard, senior policy director for Oregon Business & Industry.

HB 4073 modernizes Oregon's administrative rulemaking system to ensure regulations are transparent, economically responsible, and accountable — without preventing agencies from doing their jobs. This is about the how to of implementation — not about the policy decisions you all make as legislators. It's not about what is regulated but how the administrative infrastructure arrives at their management and implementation on the ground, in the real world. House bill 4073:

1) Guarantees a Seat at the Table for Regulated Businesses

- Requires agencies to form advisory committees before proposing rules that impose new or increased costs.
- Allows regulated parties to trigger an advisory committee by request.
- Ensures committees include representatives of regulated entities.

2) Requires Honest, Detailed Fiscal Impact Analysis

Agencies must now disclose:

- The number and types of affected businesses.
- Compliance costs, including:
 - Reporting and recordkeeping
 - Professional services
 - Equipment, labor, and administrative costs
 - Opportunity costs.

The fiscal impact analysis called for here is not dissimilar to that expected within the legislative process for state government agencies.

- We also ask for documentation of business feedback when claiming “no fiscal impact”, to assure there is credible reasoning behind that determination.

3) Protects Small Businesses

- Requires agencies to assess and document small-business impacts, something that's supposed to happen now but generally doesn't.
- Forces agencies to show how small businesses were involved in rule development.
- Strengthens compliance with Oregon's existing small-business mitigation law.

4) Forces Transparency and Consideration of Alternatives

- Requires agencies to explain:
 - Why no advisory committee was used.
 - What alternative regulatory options were considered.
 - Why less costly options were rejected.
- Requires agencies to publish summaries of public comments and agency responses.

5) Prevents Surprise and Rushed Regulation

- Modestly Extends notice and comment timelines.
- Delays the default effective date of permanent rules by 30 days.
- Requires clear notice and hearing procedures.

6) Strengthens Accountability and Judicial Oversight

- Adds a clear “arbitrary or capricious” standard for overturning agency action and aligns Oregon with well-established administrative-law principles across multiple agency statutes.

The arbitrary and capricious standard has been codified in federal law since 1946 and has a robust history of case law around it. Oregon is an outlier amongst states in lacking a comparable standard.

That said, Oregon clearly recognizes the importance and utility of the arbitrary and capricious concept as evidenced by the numerous citations of this standard in most of the lawsuits filed by the attorney general against the Trump administration. Several of the suits have entire detailed sections dedicated to applying the arbitrary and capricious standard in those suits. We respectfully suggest that if the standard is good enough for the DOJ's federal lawsuits, it ought to be good enough for the rest of us here at home.

7) Strengthens Legislative Oversight of Regulatory Growth

- Requires agencies to report to the Legislature when new rules increase:
 - Agency budgets by 0.5% or more
 - Staffing needs for enforcement or administration.

This helps to reduce surprise costs and increases that get baked in as CSL when the budget is created.

This bill makes regulation smarter, fairer, and more accountable.

It protects small businesses from hidden costs, ensures rules are grounded in real-world data, and creates transparency and accountability without weakening public protections.

Please support HB 4073