

House Committee on Rules

Re: Opposition to HB 4073

Dear Chair Bowman, Vice-Chairs Elmer and Pham, and Members of the Committee

As an attorney who practices administrative law, I am concerned that the mandated use of rule advisory committees proposed in HB 4073 is unwarranted for most rulemakings and will often act to the detriment of regulated parties. The use of advisory committees slows down the rulemaking process, imposes costs in terms of staff time, and is typically far less efficient than the comment process in providing substantive information. In addition, adding more bureaucracy to the process of rulemaking is detrimental to the allocation of resources among the various functions of agencies and detracts from government efficiency.

In many instances, businesses will have an interest in having administrative rules adopted expeditiously, even when such rules may subject them to additional obligations. Businesses sometimes have a pressing need to have regulatory ambiguities resolved in order to avoid unnecessary capital expenditures. Similarly, businesses suffer when agency resources are diverted from essential activities such as issuing permits. In this regard, imposing an additional cumbersome impediment that delays rulemaking should be avoided.

The bill fails to consider that rulemaking advisory committees do not always provide much value to the rulemaking process. Too many times the end result of a rulemaking advisory committee is nothing more than the interested parties stating conclusory and predictable positions. Pragmatically speaking, information delivered orally during committee meetings tends to be of less utility to agency staff than written comments. Agencies are in the best position to determine when advisory committees are likely to benefit agency decisionmaking and agencies should not be required to employ advisory committees that do not enhance the process.

Rule advisory committees provide no value when rules are mandated by State legislation or Federal law. When legislation is enacted that imposes specific requirements that need to be implemented via rules, or when an agency is required to adopt a federal rule, *see* ORS 183.337, rule advisory committees will serve no substantive purpose because the agency will not have any discretion to alter the requirements.

Conclusion

Imposing an additional inflexible and burdensome rulemaking requirement will not improve rulemaking nor will it reduce the burden of rules on regulated parties. The most commonly encountered problems with state rules are ambiguity, improper scope, and organization. These are the kinds of problems that are best addressed by written comments than by advisory committees.

Bert Krages
Attorney at Law