

House Bill 2206

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Office of Regulatory Streamlining and Attorney General Hardy Myers for Department of Justice)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies laws governing procedure for amending administrative rules. Requires that notice of proposed rule amendment show changes by striking through material to be deleted and underlining new material, or by other method that clearly shows new and deleted material. Imposes similar requirement for amended rules submitted to Legislative Counsel.

A BILL FOR AN ACT

1
2 Relating to procedure for amending administrative rules; creating new provisions; and amending
3 ORS 183.335 and 183.715.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 183.335, as amended by section 206, chapter 794, Oregon Laws 2003, is
6 amended to read:

7 183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice
8 of its intended action:

9 (a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which pro-
10 vides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

11 (b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

12 (c) At least 28 days before the effective date, to persons who have requested notice pursuant to
13 subsection (8) of this section; and

14 (d) At least 49 days before the effective date, to the persons specified in subsection (15) of this
15 section.

16 (2)(a) The notice required by subsection (1) of this section shall state the subject matter and
17 purpose of the intended action in sufficient detail to inform a person that the person's interests may
18 be affected, and the time, place and manner in which interested persons may present their views on
19 the intended action.

20 (b) The agency shall include with the notice of intended action given under subsection (1) of this
21 section:

22 (A) A citation of the statutory or other legal authority relied upon and bearing upon the
23 promulgation of the rule;

24 (B) A citation of the statute or other law the rule is intended to implement;

25 (C) A statement of the need for the rule and a statement of how the rule is intended to meet the
26 need;

27 (D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by
28 the agency in considering the need for and in preparing the rule, and a statement of the location
29 at which those documents are available for public inspection. The list may be abbreviated if neces-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 sary, and if so abbreviated there shall be identified the location of a complete list;

2 (E) A statement of fiscal impact identifying state agencies, units of local government and the
 3 public which may be economically affected by the adoption, amendment or repeal of the rule and
 4 an estimate of that economic impact on state agencies, units of local government and the public. In
 5 considering the economic effect of the proposed action on the public, the agency shall utilize avail-
 6 able information to project any significant economic effect of that action on businesses which shall
 7 include a cost of compliance effect on small businesses affected. For an agency specified in ORS
 8 183.530, the statement of fiscal impact shall also include a housing cost impact statement as de-
 9 scribed in ORS 183.534;

10 (F) If an advisory committee is not appointed under the provisions of ORS 183.333, an explana-
 11 tion as to why no advisory committee was used to assist the agency in drafting the rule; and

12 (G) A request for public comment on whether other options should be considered for achieving
 13 the rule’s substantive goals while reducing the negative economic impact of the rule on business.

14 (c) The Secretary of State may omit the information submitted under paragraph (b) of this sub-
 15 section from publication in the bulletin referred to in ORS 183.360.

16 (d) When providing notice of an intended action under the provisions of subsection (1)(c) of this
 17 section, the agency shall provide a copy of the rule that the agency proposes to adopt, amend or
 18 repeal, or an explanation of how the person may acquire a copy of the rule. The copy of an amended
 19 rule shall show all changes to the rule by *[bracketing]* **striking through** material to be deleted and
 20 *[showing]* **underlining** all new material *[in boldfaced type]*, **or by any other method that clearly**
 21 **shows all new and deleted material.**

22 (3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons
 23 reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon
 24 request received from 10 persons or from an association having not less than 10 members before the
 25 earliest date that the rule could become effective after the giving of notice pursuant to subsection
 26 (1) of this section. An agency holding a hearing upon a request made under this subsection shall give
 27 notice of the hearing at least 21 days before the hearing to the person who has requested the
 28 hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the
 29 persons specified in subsection (15) of this section. The agency shall publish notice of the hearing
 30 in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall
 31 consider fully any written or oral submission.

32 (b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection,
 33 and the rule for which the hearing is to be conducted applies only to a limited geographical area
 34 within this state, or affects only a limited geographical area within this state, the hearing shall be
 35 conducted within the geographical area at the place most convenient for the majority of the resi-
 36 dents within the geographical area. At least 14 days before a hearing conducted under this para-
 37 graph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and
 38 in a newspaper of general circulation published within the geographical area that is affected by the
 39 rule or to which the rule applies. If a newspaper of general circulation is not published within the
 40 geographical area that is affected by the rule or to which the rule applies, the publication shall be
 41 made in the newspaper of general circulation published closest to the geographical area.

42 (c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the
 43 State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by inmates
 44 in the proposed adoption, amendment or repeal of any rule to written submissions.

45 (d) An agency that receives data or views concerning proposed rules from interested persons

1 shall maintain a record of the data or views submitted. The record shall contain:

2 (A) All written materials submitted to an agency in response to a notice of intent to adopt,
3 amend or repeal a rule.

4 (B) A recording or summary of oral submissions received at hearings held for the purpose of
5 receiving those submissions.

6 (C) Comments of the committees submitted under subsection (16) of this section.

7 (4) Upon request of an interested person received before the earliest date that the rule could
8 become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall
9 postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the
10 requesting person an opportunity to submit data, views or arguments concerning the proposed
11 action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant
12 to subsection (5) of this section.

13 (5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or sus-
14 pend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds
15 practicable, if the agency prepares:

16 (a) A statement of its findings that its failure to act promptly will result in serious prejudice to
17 the public interest or the interest of the parties concerned and the specific reasons for its findings
18 of prejudice;

19 (b) A citation of the statutory or other legal authority relied upon and bearing upon the
20 promulgation of the rule;

21 (c) A statement of the need for the rule and a statement of how the rule is intended to meet the
22 need;

23 (d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by
24 the agency in considering the need for and in preparing the rule, and a statement of the location
25 at which those documents are available for public inspection; and

26 (e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS
27 183.534.

28 (6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary
29 and may be effective for a period of not longer than 180 days. The adoption of a rule under this
30 subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to
31 (4) of this section.

32 (b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary
33 period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

34 (7) Notwithstanding subsections (1) to (4) of this section, an agency may amend a rule without
35 prior notice or hearing if the amendment is solely for the purpose of:

36 (a) Changing the name of an agency by reason of a name change prescribed by law;

37 (b) Correcting spelling;

38 (c) Correcting grammatical mistakes in a manner that does not alter the scope, application or
39 meaning of the rule; or

40 (d) Correcting statutory references.

41 (8) Any person may request in writing that an agency mail to the person copies of its notices
42 of intended action given pursuant to subsection (1) of this section. Upon receipt of any request the
43 agency shall acknowledge the request, establish a mailing list and maintain a record of all mailings
44 made pursuant to the request. Agencies may establish procedures for establishing and maintaining
45 the mailing lists current and, by rule, establish fees necessary to defray the costs of mailings and

1 maintenance of the lists.

2 (9) This section does not apply to rules establishing an effective date for a previously effective
3 rule or establishing a period during which a provision of a previously effective rule will apply.

4 (10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.155, 279A.250 to
5 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280,
6 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545,
7 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and
8 279C.800 to 279C.870 relating to public contracts and purchasing.

9 (11)(a) No rule is valid unless adopted in substantial compliance with the provisions of this
10 section in effect on the date the rule is adopted.

11 (b) In addition to all other requirements with which rule adoptions must comply, no rule adopted
12 after October 3, 1979, is valid unless submitted to the Legislative Counsel under ORS 183.715.

13 (12) Notwithstanding the provisions of subsection (11) of this section, an agency may correct its
14 failure to substantially comply with the requirements of subsections (2) and (5) of this section in
15 adoption of a rule by an amended filing, so long as the noncompliance did not substantially prejudice
16 the interests of persons to be affected by the rule. However, this subsection does not authorize
17 correction of a failure to comply with subsection (2)(b)(E) of this section requiring inclusion of a
18 fiscal impact statement with the notice required by subsection (1) of this section.

19 (13) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an
20 agency need not be based upon or supported by an evidentiary record.

21 (14) When an agency has established a deadline for comment on a proposed rule under the pro-
22 visions of subsection (3)(a) of this section, the agency may not extend that deadline for another
23 agency or person unless the extension applies equally to all interested agencies and persons. An
24 agency shall not consider any submission made by another agency after the final deadline has
25 passed.

26 (15) The notices required under subsections (1) and (3) of this section must be given by the
27 agency to the following persons:

28 (a) If the proposed adoption, amendment or repeal results from legislation that was passed
29 within two years before notice is given under subsection (1) of this section, notice shall be given to
30 the legislator who introduced the bill that subsequently was enacted into law, and to the chair or
31 cochairs of all committees that reported the bill out, except for those committees whose sole action
32 on the bill was referral to another committee.

33 (b) If the proposed adoption, amendment or repeal does not result from legislation that was
34 passed within two years before notice is given under subsection (1) of this section, notice shall be
35 given to the chair or cochairs of any interim or session committee with authority over the subject
36 matter of the rule.

37 (c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given
38 to the Speaker of the House of Representatives and to the President of the Senate who are in office
39 on the date the notice is given.

40 (16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be
41 affected by a proposed adoption, amendment or repeal, the committees receiving notice under sub-
42 section (15) of this section shall review the proposed adoption, amendment or repeal for compliance
43 with the legislation from which the proposed adoption, amendment or repeal results.

44 (b) The committees shall submit their comments on the proposed adoption, amendment or repeal
45 to the agency proposing the adoption, amendment or repeal.

1 **SECTION 2.** ORS 183.715 is amended to read:

2 183.715. (1) A state agency that adopts a rule shall submit a copy of the adopted rule to the
3 Legislative Counsel within 10 days after the agency files a certified copy of the rule in the office
4 of the Secretary of State as provided in ORS 183.355 (1). The copy of [*the adopted*] **an amended** rule
5 that is submitted to the Legislative Counsel must show [*new matter in boldfaced type and omitted*
6 *matter in italic type within brackets or in any manner approved by the Legislative Counsel that clearly*
7 *delineates new and omitted matter*] **all changes to the rule by striking through material to be**
8 **deleted and underlining all new material, or by any other method that clearly shows all new**
9 **and deleted material.**

10 (2) Notwithstanding subsection (1) of this section, an agency adopting a rule incorporating pub-
11 lished standards or a specialty code by reference is not required to file a copy of those standards
12 with the Legislative Counsel if:

13 (a) The standards or a specialty code adopted are unusually voluminous and costly to reproduce;
14 and

15 (b) The rule filed with the Legislative Counsel identifies the location of the standards or a spe-
16 cialty code so incorporated and makes them available to the Legislative Counsel on the request of
17 the Legislative Counsel.

18 **SECTION 3. The amendments to ORS 183.335 and 183.715 by sections 1 and 2 of this 2005**
19 **Act apply only to rules that become effective on or after the effective date of this 2005 Act.**

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