

(To Resolve Conflicts)

**A-Engrossed**  
**House Bill 2207**

Ordered by the Senate June 7  
Including Senate Amendments dated June 7 to resolve conflicts

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.

Provides that administrative rule is not valid unless adopted in substantial compliance with statutory procedural requirements that are in effect on date that notice of intent to adopt rule is delivered to Secretary of State for purpose of publication.

**A BILL FOR AN ACT**

1  
2 Relating to procedural requirements for adoption of administrative rules; creating new provisions;  
3 and amending ORS 137.673 and 183.335 and section 3, chapter 18, Oregon Laws 2005 (Enrolled  
4 House Bill 2206).

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

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

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

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

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

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

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

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

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

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

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

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

3 (D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by  
4 the agency in considering the need for and in preparing the rule, and a statement of the location  
5 at which those documents are available for public inspection. The list may be abbreviated if neces-  
6 sary, and if so abbreviated there shall be identified the location of a complete list;

7 (E) A statement of fiscal impact identifying state agencies, units of local government and the  
8 public which may be economically affected by the adoption, amendment or repeal of the rule and  
9 an estimate of that economic impact on state agencies, units of local government and the public. In  
10 considering the economic effect of the proposed action on the public, the agency shall utilize avail-  
11 able information to project any significant economic effect of that action on businesses which shall  
12 include a cost of compliance effect on small businesses affected. For an agency specified in ORS  
13 183.530, the statement of fiscal impact shall also include a housing cost impact statement as de-  
14 scribed in ORS 183.534;

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

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

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

21 (d) When providing notice of an intended action under the provisions of subsection (1)(c) of this  
22 section, the agency shall provide a copy of the rule that the agency proposes to adopt, amend or  
23 repeal, or an explanation of how the person may acquire a copy of the rule. The copy of an amended  
24 rule shall show all changes to the rule by bracketing material to be deleted and showing all new  
25 material in boldfaced type.

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

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

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

4 (d) An agency that receives data or views concerning proposed rules from interested persons  
5 shall maintain a record of the data or views submitted. The record shall contain:

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

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

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

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

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

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

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

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; and

30 (e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS  
31 183.534.

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

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

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

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

41 (b) Correcting spelling;

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

44 (d) Correcting statutory references.

45 (8) Any person may request in writing that an agency mail to the person copies of its notices

1 of intended action given pursuant to subsection (1) of this section. Upon receipt of any request the  
 2 agency shall acknowledge the request, establish a mailing list and maintain a record of all mailings  
 3 made pursuant to the request. Agencies may establish procedures for establishing and maintaining  
 4 the mailing lists current and, by rule, establish fees necessary to defray the costs of mailings and  
 5 maintenance of the lists.

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

8 (10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.155, 279A.250 to  
 9 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280,  
 10 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545,  
 11 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and  
 12 279C.800 to 279C.870 relating to public contracts and purchasing.

13 (11)(a) *[No]* A rule is **not** valid unless adopted in substantial compliance with the provisions of  
 14 this section in effect *[on the date the rule is adopted]* **on the date that the notice required under**  
 15 **subsection (1) of this section is delivered to the Secretary of State for the purpose of publi-**  
 16 **cation in the bulletin referred to in ORS 183.360.**

17 (b) In addition to all other requirements with which rule adoptions must comply, *[no rule adopted*  
 18 *after October 3, 1979,]* a rule is **not** valid *[unless]* **if the rule has not been** submitted to the Legis-  
 19 lative Counsel *[under]* **in the manner required by** ORS 183.715.

20 (12) Notwithstanding the provisions of subsection (11) of this section, an agency may correct its  
 21 failure to substantially comply with the requirements of subsections (2) and (5) of this section in  
 22 adoption of a rule by an amended filing, *[so]* **as** long as the noncompliance did not substantially  
 23 prejudice the interests of persons to be affected by the rule. However, this subsection does not au-  
 24 thorize correction of a failure to comply with subsection (2)(b)(E) of this section requiring inclusion  
 25 of a fiscal impact statement with the notice required by subsection (1) of this section.

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

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

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

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

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

44 (c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given  
 45 to the Speaker of the House of Representatives and to the President of the Senate who are in office

1 on the date the notice is given.

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

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

8 **SECTION 2. The amendments to ORS 183.335 by section 1 of this 2005 Act apply only to**  
9 **rules for which the notice required under ORS 183.335 (1) is delivered to the Secretary of**  
10 **State on or after the effective date of this 2005 Act for the purpose of publication in the**  
11 **bulletin referred to in ORS 183.360.**

12 **SECTION 2a.** If House Bill 2206 becomes law, section 3, chapter 18, Oregon Laws 2005 (En-  
13 rolled House Bill 2206), is amended to read:

14 **Sec. 3.** The amendments to ORS 183.335 and 183.715 by sections 1 and 2, **chapter 18, Oregon**  
15 **Laws 2005 (Enrolled House Bill 2206)**, [*of this 2005 Act*] apply only to rules [*that become effective*  
16 *on or after the effective date of this 2005 Act*] **for which the notice required under ORS 183.335**  
17 **(1) is delivered to the Secretary of State on or after the effective date of chapter 18, Oregon**  
18 **Laws 2005 (Enrolled House Bill 2206), for the purpose of publication in the bulletin referred**  
19 **to in ORS 183.360.**

20 **SECTION 3.** ORS 137.673 is amended to read:

21 137.673. Rules adopted by the Oregon Criminal Justice Commission shall not be declared invalid  
22 solely because of irregularities in procedural rulemaking, including but not limited to the provisions  
23 of ORS 183.335 [(11)(a)] or 183.400 (4)(c).  
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