Feb. 14, 2023

TO: Members of the Senate Committee on Rules

FR: Sharla Moffett, Oregon Business & Industry

RE: SB 42

Good afternoon, Chair Lieber and Members of the Committee:

For the record, my name is Sharla Moffett, senior policy director for Oregon Business & Industry. OBI is a statewide association representing businesses from a wide variety of industries and from each of Oregon's 36 counties Our 1,600 member companies, more than 80% of which are small businesses and employ more than 250,000 Oregonians. Oregon's private sector businesses help drive a healthy, prosperous economy for the benefit of everyone.

Thank you for the opportunity to provide testimony on SB 42. SB 42 would augment the current statutorily required fiscal impact statements related to rulemaking in ways that are important to the regulated community, but also to taxpayers and, we expect, legislative budget-writers.

Specifically, SB 42:

- Requires consideration of the economic impact of rules, such as job loss and costs to consumers;
- Requires that a fiscal impact statement be complete—not "indeterminate"—when the rule is expected to have a total fiscal impact greater than $100,000;
- Allows for third-party validation of fiscal impact statements; and,
- Stipulates that an agency must report to the Legislative Fiscal Officer the fiscal impacts of rules adopted during the biennium as part of its biennial budget request. This report would include information about costs and fees tied to rulemaking, such as fee increases charged by the agency, significant transfers of funds to the agency, rededication of agency staff or a need for new state resources in the next budget of more than $100,000.

Fiscal impact statements for rulemaking are simply good governance. With so much of the state's policy set through administrative rule and so many legislatively adopted programs effectuated through those rules, the public, regulated entities and legislators all have a right to fully understand the fiscal implications of rules.

Unfortunately, the preparation of fiscal impact statements has increasingly become a check-the-box exercise in the rulemaking process. At most agencies, the analyses are largely pro forma, carried out simply to meet rulemaking requirements.

In fairness, agency staff are normally open to data from the regulated community showing a differing economic impact than the one proffered. However, this burden should not fall on regulated entities, which do not have the same level of information at their fingertips, and which are assessing proposed rules.

However, even if a fiscal impact statement was complete, the agency is not required to use it in making rulemaking decisions.

During the Climate Protection Program rulemaking process, the regulated community hired a third-party economic consultant to produce a report detailing sector-specific economic impacts. The overall cost to the state in increased energy costs as well as losses of tax revenue, business income and wages was nearly $10 billion over the life of the program. DEQ's contractor estimated the program to generate a net benefit to the state. These discrepancies were never resolved, which leaves significant unanswered questions about the true economic impact to the state and to consumers.

I served on a rulemaking advisory committee for the greenhouse gas reporting program for DEQ in 2019. The agency estimated fiscal impacts for each portion of the rule, including an adopted provision that increased the records retention requirement from five to seven years. DEQ estimated the cost of this to be between $11 and $130. Even the high end, $130, wouldn't be enough to buy a file cabinet, much less add electronic storage capacity for a 40% increase in retained information.

Setting aside frustrations around the estimates for programs, there seems to be little regard for the long-term administrative cost of programs. Perhaps there is an assumption that sustainability comes through ever-increasing fees, or perhaps there is an assumption that the Legislature will simply provide the resources necessary to maintain a program. Both seem flawed. It is prudent to fully understand all likely cost implications of a program up front. After all, you do not pass legislation without fiscal impacts and a vetting by Ways & Means of those impacts. Should the same logic not apply to policies enacted in the Executive Branch?

Thank you for the opportunity to testify.