

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 165
SECRETARY OF STATE
ELECTIONS DIVISION

FILED

10/06/2023 8:58 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updating statutes; allowing Division employee representation at contested case hearings

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/07/2023 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Bob Roberts
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 12/06/2023

TIME: 2:00 PM - 2:30 PM

OFFICER: Bob Roberts

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 503-446-4951

CONFERENCE ID: 824550816

NEED FOR THE RULE(S)

Agencies may have employees represent them at contested case hearings under certain circumstances. The updates to this rule are needed to modify the list of statutes under which the Division may represent itself in lieu of obtaining representation from the Oregon Department of Justice.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Elections Division is not aware of any impact the proposed amendments to this rule would have on racial equity in the state.

FISCAL AND ECONOMIC IMPACT:

The proposed amendments may result in cost savings for the Elections Division. The Division would have the authority to be represented by Division staff at certain contested case hearings in lieu of obtaining representation from the

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Employees representing the Division in contested case hearings are required to obtain training to ensure compliance with the law and the Attorney General's rules. There will be a minimal fiscal impact for the Elections Division to comply with these requirements.

(2)(a)-(c) This rule does not affect small businesses.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of this rule as it does not affect small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

A Rules Advisory Committee was not involved because the fiscal impact of the proposed amendments is expected to be minimal.

AMEND: 165-001-0036

RULE SUMMARY: The proposed amendments to this rule would allow the Elections Division to be represented by division staff members in contested cases involving ORS 260.275, 260.281, and 260.285. The proposed amendments also remove references to repealed statutes.

CHANGES TO RULE:

165-001-0036

Employee Representation at Contested Case Hearings ¶¶

(1) The Agency's goal in contested case hearings is to have a full and accurate record upon which the Agency can make the best decision. To help ensure a full record, the Agency allows employees to represent the Agency in certain contested case hearings. The employee representative's role is to represent the Agency in a way that supports objective fact finding and encourages an open, fair, and efficient process.¶¶

(2) An Agency employee may represent the Agency in contested case hearings involving violations of ORS 260.035, 260.039, 260.041, 260.042, 260.044, 260.054, 260.055, 260.057, 260.076, 260.078, 260.083, 260.1012, 260.1128, 260.275, 260.118, 281 and 260.73285.¶¶

(3) The representative's responsibilities include, but are not limited to:¶¶

(a) Presenting evidence;¶¶

(b) Asking questions of all witnesses;¶¶

(c) Presenting information about the facts, and advocating for staff's position surrounding the facts;¶¶

(d) Presenting information on how the facts apply to the statutes or rules directly related to the issues in the contested case;¶¶

(e) Presenting information comparing Agency actions in similar situations;¶¶

(f) Presenting information about the literal meaning of the statutes or rules that apply to the issues in the contested case; and¶¶

(g) Presenting information about the admissibility of evidence or the correctness of procedures being followed.¶¶

(4) The employee representative may not make legal arguments. "Legal arguments" include arguments on:¶¶

(a) The jurisdiction of the Agency to hear the contested case;¶¶

(b) The constitutionality of a statute or rule or the application of a constitutional requirement to the Agency; and¶¶

(c) The application of court precedent to the facts of the particular contested case proceeding.¶¶

(5) When an employee represents the Agency in a contested case hearing, the presiding officer will advise the employee representative of the way in which objections may be made. This advice is of a procedural nature and

does not change applicable law on waiver or the duty to make timely objections. If the objections involve legal argument, the presiding officer will provide reasonable opportunity for the employee representative to consult legal counsel and permit legal counsel to file written legal argument within a reasonable time after the conclusion of the hearing.

Statutory/Other Authority: ORS 246.150

Statutes/Other Implemented: ORS 260.232, ORS 260.995, ORS 260.285