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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 731  
DEPARTMENT OF TRANSPORTATION

**FILED**  
05/13/2024 2:04 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Procedure for city and county applications to the Jurisdictional Transfers Advisory Committee for funding recommendation

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/21/2024 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.*

*A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.*

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**NEED FOR THE RULE(S)**

During the 2023 legislative session, the Oregon Legislature passed House Bill 2793. In section 3, the Department of Transportation is called upon to adopt rules specifying the process by which a city or county may apply for inclusion on the list of jurisdictional transfers recommended for funding and submitted to the Joint Committee on Transportation under section 1 the Act. HB 2793 also established a Jurisdictional Transfer Advisory Committee (Committee) to review applications for jurisdictional transfers of portions of state highway from ODOT to a city or county and recommend three jurisdictional transfers per biennium to the Joint Commission on Transportation.

**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE**

House Bill 2793 (enrolled) which can be found online at [HB2793 \(oregonlegislature.gov\)](http://HB2793.oregonlegislature.gov)

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

The proposed rule is unlikely to have an affect racial equity in the state, as it addresses only the process of application. To the extent racial equity may be affected, it is a result of the legislation rather than the rule. As part of the legislation, the Committee is required to review potential impacts on historically underserved groups.

**FISCAL AND ECONOMIC IMPACT:**

Since the application is voluntary, the rule itself will not have a fiscal or economic impact unless the city or county chooses to apply. Applicant cities and counties will incur some staff costs associated with completing the application and presenting to the Committee. ODOT will incur staff costs associated with staffing the Committee, assisting applicants, and distributing the recommendations report.

Should the Joint Commission on Transportation recommend funding of some or all of the recommended transfers, a fiscal impact would be experienced by the State. Applicant cities and counties are also required to provide 20% of the cost.

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**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) As ODOT's participation in the process is compelled by HB2793, it will be economically impacted. Participation by cities and counties is voluntary. Cities, counties and ODOT will incur some staff costs associated with completing the application and presenting to the Committee. There will be no application fee.

(2)(a),(b) and (c) The Rule will not affect small businesses.

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

Small businesses will have the opportunity to comment through the Rule adoption process and will be notified of the opportunity.

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

The Rule is procedural, and a Rule Advisory Committee was not necessary. However, the Governor Appointed Jurisdictional Transfer Advisory Committee influenced the development of the rules through their development of an application.

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**RULES PROPOSED:**

731-145-0000, 731-145-0010, 731-145-0020, 731-145-0030, 731-145-0040

ADOPT: 731-145-0000

**RULE SUMMARY:** The rules in this division establish the process by which a city or county may apply for inclusion on the list of jurisdictional transfers of state highway facilities from the ownership of ODOT to the ownership of a city or county, to be recommended for funding and submitted to the Joint Committee on Transportation.

**CHANGES TO RULE:**

731-145-0000

Purpose

The purpose of these rules, OAR 731, Division 145, is to establish the process by which a city or county may apply for inclusion on the list of jurisdictional transfers of state highway facilities from the ownership of ODOT to the ownership of a city or county, to be recommended for funding and submitted to the Joint Committee on Transportation.

Statutory/Other Authority: ORS184.619, Ch 323 OL 2023

Statutes/Other Implemented: Ch 323 OL 2023

ADOPT: 731-145-0010

RULE SUMMARY: This rule establishes definitions for the rules in this division, describing the process by which a city or county may apply for inclusion on the list of jurisdictional transfers of state highway facilities from the ownership of ODOT to the ownership of a city or county, to be recommended for funding and submitted to the Joint Committee on Transportation.

CHANGES TO RULE:

731-145-0010

Definitions

(1) "Applicant" refers to a city or county completing the application.¶

(2) "Joint Committee on Transportation" means the legislative committee described in Oregon Laws 2023, chapter 323.¶

(3) "Jurisdictional transfer" means the transfer of ownership of all or part of a transportation facility from the ownership of one government entity to another, such as from ODOT to a City.¶

(4) "Jurisdictional Transfer Advisory Committee" or "Committee" means the Governor-appointed committee described in Oregon Laws 2023, chapter 323, for purposes of reviewing and recommending for funding applications for jurisdictional transfers.¶

(5) "ODOT" means the Oregon Department of Transportation.¶

(6) "OTC" means the Oregon Transportation Commission.¶

(7) "State of good repair" means a condition in which physical assets, both individually and as a system, are performing at a level at least equal to that called for in their as-built or as-modified design specification during any period when the life cycle cost of maintaining the assets is lower than the cost of replacing them and sustained through regular maintenance and replacement programs.¶

(8) "Transportation facility," for purposes of these OAR 731, division 145, rules, means a facility and all parts of the facility that are used for conveying and managing the transportation of people and goods. "Transportation facility" includes all associated structures and transportation features.

Statutory/Other Authority: ORS184.619, Ch 323 OL 2023

Statutes/Other Implemented: Ch 323 OL 2023

ADOPT: 731-145-0020

RULE SUMMARY: The rules in this division establish the process by which a city or county may apply for inclusion on the list of jurisdictional transfers of state highway facilities from the ownership of ODOT to the ownership of a city or county, to be recommended for funding and submitted to the Joint Committee on Transportation.

CHANGES TO RULE:

731-145-0020

Application Process

(1) A city or county may apply to the Jurisdictional Transfer Advisory Committee for inclusion on the list of jurisdictional transfers recommended for funding that is submitted to the Joint Committee on Transportation, in accordance with the requirements described in this rule, OAR 731-145-0020. ¶

(2) Pre-Application: ¶

(a) A city or county may submit a pre-application to the Committee through the ODOT staff person assigned to the Committee. ¶

(b) A pre-application is used to determine eligibility of a city or county to apply to the Committee. ¶

(c) To apply as a pre-applicant, a city or county must submit to the Committee the following: ¶

(A) A letter or resolution indicating support for the jurisdictional transfer by the governing body of the city or county that proposes to be the receiving jurisdiction. ¶

(B) A letter of support for the jurisdictional transfer by the ODOT Region Manager in which the highway is located. ¶

(C) A completed pre-application form, available on the Jurisdictional Transfer Advisory Committee Website. ¶

(d) The Committee will determine if the Applicant is eligible to apply and respond to the pre-application. ¶

(3) Application: ¶

(a) Upon receipt of approval of the pre-application, a city or county may submit an application to the Committee through the ODOT staff person assigned to the Committee. ¶

(b) For the Committee to consider an application, in accordance with Or Laws 2023, chapter 323, section 1, the application must include, at a minimum, the following: ¶

(A) The name of the city or county; ¶

(B) A description of the portion of the highway to be transferred; ¶

(C) A desired timeline for the transfer; ¶

(D) The scope of the transfer; ¶

(E) A description of which body assumes liability during and after the transfer; ¶

(F) The cost to update the segment of highway transferred to a state of good repair; ¶

(G) Plans to provide at least 20 percent of the moneys required for the jurisdictional transfer; ¶

(H) A community vision plan that describes the applicant's plan for managing and improving the highway; and ¶

(I) Any other information the city or county deem necessary or helpful to the Jurisdictional Transfer Advisory Committee in making its recommendations to the Joint Committee on Transportation. ¶

(4) Information on the Jurisdictional Transfer Advisory Committee and its schedule can be found on the ODOT website (<https://www.oregon.gov/odot/Get-Involved/Pages/Jurisdictional-Transfer-Comm.aspx>).

Statutory/Other Authority: ORS184.619, Ch 323 OL 2023

Statutes/Other Implemented: Ch 323 OL 2023

ADOPT: 731-145-0030

RULE SUMMARY: The rules in this division establish the process by which a city or county may apply for inclusion on the list of jurisdictional transfers of state highway facilities from the ownership of ODOT to the ownership of a city or county, to be recommended for funding and submitted to the Joint Committee on Transportation.

CHANGES TO RULE:

731-145-0030

Application Review Process

- (1) The Jurisdictional Transfer Advisory Committee Chairperson, or their designee, shall receive submitted pre-applications. The Chairperson may schedule a meeting of the Committee to review each pre-application or may hold applications until such time the Committee is able to meet to discuss multiple pre-applications. ¶
- (2) Upon review of the pre-application(s), the Committee, by a majority vote, will: ¶
  - (a) Invite a city or county to submit an application if the Committee accepts the pre-application; ¶
  - (b) Return the pre-application to the city or county because the pre-application requires additional clarification or further work; or ¶
  - (c) Reject the pre-application and not consider further information related to the application. ¶
- (3) The Committee will notify a pre-applicant city or county of the Committee's decision regarding the pre-application. ¶
- (4) At the close of the application period, the Committee Chairperson, or their designee, shall schedule a meeting for review of applications by the Committee. ¶
- (5) At the scheduled meeting for review of applications, the Committee shall: ¶
  - (a) Review the applications. ¶
  - (b) If needed, request: ¶
    - (A) Missing or additional information from the applicant in writing, to which the city or county must respond before the Committee may consider the application to be complete; or ¶
    - (B) A presentation by the city or county to the Committee. ¶
  - (c) Develop a list of jurisdictional transfers to present to the Oregon Transportation Commission for review and comment. ¶
- (6) After soliciting review and comment from the Oregon Transportation Commission, the Committee will develop a list of three jurisdictional transfers to recommend for funding: ¶
- (7) If fewer than 3 applications are received by the Committee during the application period, the Committee will review the applications and will bring forward its recommendations to the OTC for review and comment before submission to the Joint Committee on Transportation.

Statutory/Other Authority: ORS184.619, Ch 323 OL 2023

Statutes/Other Implemented: Ch 323 OL 2023

ADOPT: 731-145-0040

RULE SUMMARY: The rules in this division establish the process by which a city or county may apply for inclusion on the list of jurisdictional transfers of state highway facilities from the ownership of ODOT to the ownership of a city or county, to be recommended for funding and submitted to the Joint Committee on Transportation.

CHANGES TO RULE:

731-145-0040

Report to Joint Committee on Transportation

(1) The Committee shall submit a report by September 15 of each even-numbered year to the Joint Committee on Transportation, in a manner provided in ORS 184.285, that includes the list of jurisdictional transfers recommended for funding to the Joint Committee on Transportation. The report must:

(a) Contain a list of up to three jurisdictional transfers recommended for funding; and

(b) Include the criteria used for selection, a summary of the process used to develop the list of recommendations, a list of the Committee members, and any other information the Committee deems relevant.

(2) The Committee Chair or their designee may submit the report to ODOT staff for distribution to the Joint Committee on Transportation.

(3) The Committee will provide a copy of the final recommendations to the OTC when the report is submitted to the Joint Committee on Transportation.

Statutory/Other Authority: ORS184.619, Ch 323 OL 2023

Statutes/Other Implemented: Ch 323 OL 2023