

House Bill 2635

Sponsored by Representative DRAZAN; Representatives BONHAM, BOSHART DAVIS, NEARMAN, OWENS, RESCHKE, ZIKA (Presession filed.)

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**.

Authorizes legislative caucus leaders to each appoint Senate Majority Legislative Counsel, Senate Minority Legislative Counsel, House Majority Legislative Counsel and House Minority Legislative Counsel, and establishes legislative caucus leaders as Legislative Counsel Committee. Directs Senate Majority Legislative Counsel, Senate Minority Legislative Counsel, House Majority Legislative Counsel and House Minority Legislative Counsel to co-equally manage Office of Legislative Counsel. Directs each caucus Legislative Counsel to assist in preparation of measures, opinions, research and other work requested by caucus members.

Becomes operative January 1, 2022. Authorizes caucus leaders to take preparatory measures to implement Act prior to January 1, 2022.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to Legislative Counsel; creating new provisions; amending ORS 173.111, 173.130, 173.191,
3 173.200, 173.210, 173.215 and 183.720; and prescribing an effective date.

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

5 **SECTION 1. (1) As used in the laws of this state, a reference to “the Legislative**
6 **Counsel” is a reference to each of the Senate Majority Legislative Counsel, the Senate Mi-**
7 **nority Legislative Counsel, the House Majority Legislative Counsel and the House Minority**
8 **Legislative Counsel, who each shall possess all of the powers, authorities and duties granted**
9 **by law to the Legislative Counsel.**

10 **(2) The Senate Majority Leader, the Senate Minority Leader, the House Majority Leader**
11 **and the House Minority Leader shall each appoint a Senate Majority Legislative Counsel, a**
12 **Senate Minority Legislative Counsel, a House Majority Legislative Counsel and a House Mi-**
13 **nority Legislative Counsel.**

14 **(3) The Senate Majority Legislative Counsel, the Senate Minority Legislative Counsel, the**
15 **House Majority Legislative Counsel and the House Minority Legislative Counsel shall co-**
16 **equally manage the Office of the Legislative Counsel.**

17 **(4) The Senate Majority Legislative Counsel, the Senate Minority Legislative Counsel, the**
18 **House Majority Legislative Counsel and the House Minority Legislative Counsel shall each**
19 **serve at the pleasure of their respective appointing authority.**

20 **SECTION 2.** ORS 173.111 is amended to read:

21 173.111. The Legislative Counsel Committee is established as a joint committee of the Legisla-
22 tive Assembly. [*The Legislative Counsel Committee shall select a Legislative Counsel to serve as its*
23 *executive officer.*]

24 **SECTION 3.** ORS 173.130 is amended to read:

25 173.130. (1) The Legislative Counsel shall prepare or assist in the preparation of legislative
26 measures when requested to do so by a member or committee of the Legislative Assembly. **The**

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 **Senate Majority Legislative Council, the Senate Minority Legislative Council, the House**
 2 **Majority Legislative Council and the House Minority Legislative Council shall assist in the**
 3 **preparation of legislative measures requested by members of the caucus of their respective**
 4 **appointing authorities.**

5 (2) Upon the written request of a state agency, the Legislative Council may prepare or assist
 6 in the preparation of legislative measures that have been approved for preparation in writing by the
 7 Governor or the Governor's designated representative. The Legislative Council may also prepare
 8 or assist in the preparation of legislative measures that are requested in writing by the Judicial
 9 Department, the Governor, the Secretary of State, the State Treasurer, the Attorney General or the
 10 Commissioner of the Bureau of Labor and Industries. In accordance with ORS 283.110, the Legisla-
 11 tive Council may charge the agency or officer for the services performed.

12 (3) The Legislative Council shall give such consideration to and service concerning any measure
 13 or other legislative matter before the Legislative Assembly as is requested by the House of Repre-
 14 sentatives, the Senate or any committee of the Legislative Assembly that has the measure or other
 15 matter under consideration. **The Senate Majority Legislative Council, the Senate Minority**
 16 **Legislative Council, the House Majority Legislative Council and the House Minority Legis-**
 17 **lative Council shall assist in the provision of consideration to and services requested by**
 18 **members of the caucus of their respective appointing authorities.**

19 (4) The Legislative Council, pursuant to the policies and directions of the Legislative Council
 20 Committee and in conformity with any applicable rules of the House of Representatives or Senate,
 21 shall perform or cause to be performed research service requested by any member or committee of
 22 the Legislative Assembly in connection with the performance of legislative functions. **The Senate**
 23 **Majority Legislative Council, the Senate Minority Legislative Council, the House Majority**
 24 **Legislative Council and the House Minority Legislative Council shall assist in the conduct**
 25 **of any research services requested by members of the caucus of their respective appointing**
 26 **authorities.** Research assignments made by joint or concurrent resolution of the Legislative As-
 27 sembly shall be given priority over other research requests received by the Legislative Council. The
 28 research service to be performed includes the administrative services incident to the accomplish-
 29 ment of the research requests or assignments.

30 (5) The Legislative Council shall give an opinion in writing upon any question of law in which
 31 the Legislative Assembly or any member or committee of the Legislative Assembly may have an
 32 interest when the Legislative Assembly or any member or committee of the Legislative Assembly
 33 requests the opinion. **The Senate Majority Legislative Council, the Senate Minority Legislative**
 34 **Council, the House Majority Legislative Council and the House Minority Legislative Council**
 35 **shall assist in the preparation of opinions requested by members of the caucus of their re-**
 36 **spective appointing authorities.** Except as provided in subsection (2) of this section and ORS
 37 173.135, the Legislative Council shall not give opinions or provide other legal services to persons
 38 or agencies other than the Legislative Assembly and members and committees of the Legislative
 39 Assembly.

40 (6) The Legislative Council may enter into contracts to carry out the functions of the Legisla-
 41 tive Council.

42 **SECTION 4.** ORS 173.191 is amended to read:

43 173.191. (1)[(a)] The Legislative Council Committee shall consist of the **Senate Majority**
 44 **Leader, the Senate Minority Leader, the House Majority Leader and the House Minority**
 45 **Leader.** [*Speaker of the House of Representatives, the President of the Senate, members of the House*

1 appointed by the Speaker and members of the Senate appointed by the President. The Speaker of the
 2 House of Representatives and the President of the Senate may each designate from among the members
 3 of the appropriate house an alternate to exercise powers as a member of the committee.]

4 [(b) The appointing authorities shall appoint members of a new committee within 30 days after the
 5 earlier of:]

6 [(A) The date of the convening of an odd-numbered year regular session of the Legislative Assem-
 7 bly; or]

8 [(B) The date of the convening of an organizational session of the odd-numbered year regular ses-
 9 sion of the Legislative Assembly.]

10 (2)(a) [The term of] A member of the committee shall **serve ex officio**. [expire upon the earlier
 11 of:]

12 [(A) The date of the convening of the odd-numbered year regular session of the Legislative As-
 13 sembly next following the member's appointment; or]

14 [(B) The date of the convening of an organizational session of the odd-numbered year regular ses-
 15 sion of the Legislative Assembly next following the member's appointment.]

16 (b) Vacancies occurring in the membership of the committee shall be filled [by the appointing
 17 authority] **by the respective caucuses as soon as is practicable.**

18 (3) The committee has a continuing existence and may meet, act and conduct its business during
 19 the sessions of the Legislative Assembly or any recess thereof, and in the interim period between
 20 sessions but the committee has no authority to affect the rules of either house.

21 (4) The Legislative Counsel Committee may appoint advisory committees or subcommittees. Ex-
 22 cept as otherwise provided in this subsection, individuals other than members of the Legislative
 23 Assembly may serve on such advisory committees or subcommittees. A member of such committee
 24 or subcommittee who is not a member of the Legislative Assembly shall be compensated and reim-
 25 bursed in the manner provided in ORS 292.495. An advisory committee or subcommittee appointed
 26 to assist the Legislative Counsel Committee in review of state agency rules may consist only of two
 27 or more members of the Legislative Assembly.

28 (5) The Legislative Counsel Committee may not transact business unless [a quorum is present.
 29 A quorum consists of a majority of committee members from the House of Representatives and a ma-
 30 jority of committee members from the Senate] **all members of the committee are present.**

31 (6) Action by the committee requires the affirmative vote of [a majority of committee members
 32 from the House of Representatives and a majority of committee members from the Senate] **all members**
 33 **of the committee.**

34 **SECTION 5.** ORS 173.200 is amended to read:

35 173.200. (1) [The Legislative Counsel Committee shall select the Legislative Counsel, who shall
 36 serve at the pleasure of the committee.] The Legislative Counsel shall be a person authorized to
 37 practice law in the highest court of one of the states of the United States **and shall become a**
 38 **member of the Oregon State Bar within six months of appointment.**

39 (2) The Legislative Counsel Committee shall fix the annual salary of the Legislative Counsel.
 40 Subject to the limitations otherwise provided by law for expenses of state officers, the Legislative
 41 Counsel shall be reimbursed for actual and necessary expenses incurred or paid by the Legislative
 42 Counsel in the performance of duties of the Legislative Counsel.

43 **SECTION 6.** ORS 173.210 is amended to read:

44 173.210. Subject to the approval of [the committee] **their respective appointing authorities, the**
 45 **Senate Majority Legislative Counsel, the Senate Minority Legislative Counsel, the House**

1 **Majority Legislative Counsel and the House Minority Legislative Counsel** [, *the Legislative*
 2 *Counsel*] may employ and fix the compensation of such professional assistants and clerical and other
 3 employees as the [*Legislative Counsel deems*] **the Senate Majority Legislative Counsel, the Senate**
 4 **Minority Legislative Counsel, the House Majority Legislative Counsel and the House Minority**
 5 **Legislative Counsel deem** necessary for the effective conduct of the work under the charge of the
 6 Legislative Counsel. **The Senate Majority Legislative Counsel, the Senate Minority Legislative**
 7 **Counsel, the House Majority Legislative Counsel and the House Minority Legislative Counsel**
 8 **shall strive to use shared staff to perform the work of the Office of the Legislative Counsel.**

9 **SECTION 7.** ORS 173.215 is amended to read:

10 173.215. (1) The expiration of the terms of members of the Legislative Counsel Committee, as
 11 provided by ORS 173.191, does not affect the employment of any individual filling a position previ-
 12 ously approved by the committee.

13 (2) Upon the expiration of the terms of members and until the newly appointed Legislative
 14 Counsel Committee provides otherwise, the Legislative Counsel may employ and fix the compen-
 15 sation of individuals the Legislative Counsel considers necessary for the effective conduct of the
 16 work supervised or managed by the Legislative Counsel.

17 [(3) *Notwithstanding ORS 173.111 and 173.200, if a vacancy occurs in the position of Legislative*
 18 *Counsel after the expiration of the terms of members and before the appointment of members of a new*
 19 *Legislative Counsel Committee, the President of the Senate and the Speaker of the House of Represen-*
 20 *tatives may jointly select a Legislative Counsel who has the qualifications set forth in ORS 173.200.*
 21 *The Legislative Counsel selected by the President and the Speaker serves at their pleasure at a salary*
 22 *jointly fixed by the President and the Speaker that does not exceed the salary last fixed by the com-*
 23 *mittee. The President and Speaker may act in lieu of the Legislative Counsel Committee under ORS*
 24 *293.335 in designating the Legislative Counsel they select to approve disbursements and in filing the*
 25 *statement of designation. After appointment of a Legislative Counsel Committee, the Legislative Counsel*
 26 *selected under this subsection serves at the pleasure of the committee and the committee may exercise*
 27 *power and authority over the Legislative Counsel as if the Legislative Counsel had been selected by the*
 28 *committee.*]

29 **SECTION 8.** ORS 183.720 is amended to read:

30 183.720. (1) The Legislative Counsel may review, or shall review at the direction of the Legis-
 31 lative Counsel Committee, a proposed rule or an adopted rule of a state agency. **If directed by their**
 32 **respective appointing authorities, the Senate Majority Legislative Counsel, the Senate Mi-**
 33 **nority Legislative Counsel, the House Majority Legislative Counsel and the House Minority**
 34 **Legislative Counsel shall review a proposed or adopted rule of a state agency.**

35 (2) The Legislative Counsel may review an adopted rule of a state agency upon the written re-
 36 quest of any person affected by the rule. The Legislative Counsel shall review a proposed or adopted
 37 rule of a state agency upon the written request of any member of the Legislative Assembly. The
 38 written request for review must identify the specific objection or problem with the rule.

39 (3) When reviewing a rule of a state agency pursuant to subsection (1) or (2) of this section, the
 40 Legislative Counsel shall:

41 (a) Determine whether the rule appears to be within the intent and scope of the enabling legis-
 42 lation purporting to authorize its adoption; and

43 (b) Determine whether the rule raises any constitutional issue other than described in paragraph
 44 (a) of this subsection, and if so, the nature of the issue.

45 (4) In making a determination under subsection (3)(a) of this section, the Legislative Counsel

1 shall, wherever possible, follow generally accepted principles of statutory construction.

2 (5) The Legislative Counsel shall prepare written findings on a rule reviewed, setting forth the
3 determinations made under subsection (3) of this section.

4 (6) When a review of a rule is made by the Legislative Counsel, the Legislative Counsel shall
5 send a copy of the determinations made under subsection (3) of this section to the appropriate in-
6 terim committee or, if the review was requested by a member of the Legislative Assembly or by a
7 person affected by the rule, to the person requesting the review. If the Legislative Counsel deter-
8 mines that a rule is not within the intent and scope of the enabling legislation purporting to au-
9 thorize the state agency's adoption of the rule, or that the rule raises a constitutional issue, the
10 Legislative Counsel shall also send a copy of the determination to the agency. The Legislative
11 Counsel may request that the state agency respond in writing to the determinations or appear at
12 the meeting of the interim committee at which the committee will consider the determinations. The
13 interim committee may direct the Legislative Counsel to send a copy of the determinations to the
14 presiding officer of a house of the Legislative Assembly, who may refer the determinations to any
15 legislative committee concerned.

16 (7)(a) A member of the Legislative Assembly may request that ~~the~~ Legislative Counsel prepare
17 a report on a rule adopted by a state agency that the member asserts is duplicative of or conflicts
18 with another rule. A person affected by a rule adopted by a state agency may request that Legisla-
19 tive Counsel prepare a report on the rule if the person asserts that the rule is duplicative of or
20 conflicts with another rule. A request for a report must be in writing and contain copies of the two
21 rules that are claimed to be duplicative or conflicting. The second rule may be either a rule adopted
22 by a state agency or a rule or regulation adopted by a federal agency.

23 (b)(A) Upon receipt of a written request by a member of the Legislative Assembly, the Legisla-
24 tive Counsel shall prepare a report to the interim committee that contains:

25 (i) A copy of the request, including copies of the two rules that the member asserts are con-
26 flicting or duplicative; and

27 (ii) **The** Legislative Counsel's analysis of the requirements of the two rules.

28 (B) Upon receipt of a written request by a person affected by a rule adopted by a state agency,
29 the Legislative Counsel may prepare a written report to the person and each state agency concerned
30 that contains the Legislative Counsel's analysis of the requirements of the two rules.

31 (8) Upon receipt of a report under subsection (7)(b)(A) of this section, the interim committee may
32 issue a determination that a rule is duplicative of or conflicts with the other cited rule.

33 (9) When a report on a rule is made by the Legislative Counsel under subsection (7)(b)(A) of this
34 section, the Legislative Counsel shall send a copy of the report and any determinations made under
35 subsection (8) of this section to each state agency concerned. The interim committee may direct the
36 Legislative Counsel to send a copy of the determinations to the presiding officer of a house of the
37 Legislative Assembly, who may refer the determinations to any legislative committee concerned.

38 **SECTION 9. Section 1 of this 2021 Act and the amendments to ORS 173.111, 173.130,**
39 **173.191, 173.200, 173.210, 173.215 and 183.720 by sections 2 to 8 of this 2021 Act become opera-**
40 **tive on January 1, 2022.**

41 **SECTION 10. The Senate Majority Leader, the Senate Minority Leader, the House Ma-**
42 **jority Leader and the House Minority Leader may take any action on or before January 1,**
43 **2022, to implement section 1 of this 2021 Act and the amendments to ORS 173.111, 173.130,**
44 **173.191, 173.200, 173.210, 173.215 and 183.720 by sections 2 to 8 of this 2021 Act.**

45 **SECTION 11. This 2021 Act takes effect on the 91st day after the date on which the 2021**

1 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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