

HB 2993-2
(LC 1819)
4/6/21 (MNJ/ps)

Requested by HOUSE COMMITTEE ON RULES (at the request of Representative Barbara Smith Warner)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2993**

1 On page 1 of the printed bill, line 2, delete the first comma and insert
2 “and” and after “183.335” insert a period and delete the rest of the line and
3 delete line 3.

4 Delete lines 5 through 31 and delete pages 2 through 8 and insert:

5 **“SECTION 1.** ORS 183.333 is amended to read:

6 “183.333. (1) The Legislative Assembly finds and declares that it is the
7 policy of this state that whenever possible the public be involved in the de-
8 velopment of public policy by agencies and in the drafting of rules. The
9 Legislative Assembly encourages agencies to seek public input to the maxi-
10 mum extent possible before giving notice of intent to adopt a rule. The
11 agency may appoint an advisory committee [*that will represent the interests*
12 *of persons likely to be affected by the rule,*] or use any other means of ob-
13 taining public views that will assist the agency in drafting the rule. **The**
14 **membership of an advisory committee appointed under this subsection**
15 **must represent the interests of persons and communities likely to be**
16 **affected by the rule.**

17 “(2) Any agency in its discretion may develop a list of interested parties
18 and inform those parties of any issue that may be the subject of rulemaking
19 and invite the parties to make comments on the issue.

20 “(3) If an agency appoints an advisory committee for consideration of a
21 rule under subsection (1) of this section, the agency shall seek the

1 committee's recommendations on whether the rule will have a fiscal impact,
2 what the extent of that impact will be and whether the rule will have a
3 significant adverse impact on small businesses. If the committee indicates
4 that the rule will have a significant adverse impact on small businesses, the
5 agency shall seek the committee's recommendations on compliance with ORS
6 183.540.

7 “(4) An agency shall consider an advisory committee's recommendations
8 provided under subsection (3) of this section in preparing the statement of
9 fiscal impact required by ORS 183.335 (2)(b)(E).

10 “(5) If an agency does not appoint an advisory committee for consider-
11 ation of a permanent rule under subsection (1) of this section and 10 or more
12 persons likely to be affected by the rule object to the agency's statement of
13 fiscal impact as required by ORS 183.335 (2)(b)(E) or an association with at
14 least 10 members likely to be affected by the rule objects to the statement,
15 the agency shall appoint a fiscal impact advisory committee to provide rec-
16 ommendations on whether the rule will have a fiscal impact and what the
17 extent of that impact will be. **The membership of the fiscal impact ad-**
18 **visory committee must represent the interests of persons and com-**
19 **munities likely to be affected by the rule.** An objection under this
20 subsection must be made not later than 14 days after the notice required by
21 ORS 183.335 (1) is given. If the agency determines that the statement does
22 not adequately reflect the rule's fiscal impact, the agency shall extend the
23 period for submission of data or views under ORS 183.335 (3)(a) by at least
24 20 days. The agency shall include any recommendations from the committee
25 in the record maintained by the agency for the rule.

26 “(6) An agency may appoint the Small Business Rules Advisory Commit-
27 tee established in ORS 183.407 as the advisory committee or fiscal impact
28 advisory committee for purposes of this section.

29 “(7) Subsection (5) of this section does not apply to any rule adopted by
30 an agency to comply with a judgment or a settlement of a judicial proceed-

1 ing.

2 “(8) If an agency is required by law to appoint an advisory committee **or**
3 **a fiscal impact advisory committee** under this section, the agency may
4 not appoint an officer, employee or other agent of the agency to serve as a
5 member of the advisory committee **or fiscal impact advisory committee**.

6 **“SECTION 2.** ORS 183.335 is amended to read:

7 “183.335. (1) Prior to the adoption, amendment or repeal of any rule, the
8 agency shall give notice of its intended action:

9 “(a) In the manner established by rule adopted by the agency under ORS
10 183.341 (4), which provides a reasonable opportunity for interested persons
11 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
13 the effective date;

14 “(c) At least 28 days before the effective date, to persons who have re-
15 quested notice pursuant to subsection (8) of this section; and

16 “(d) Delivered only by electronic mail, at least 49 days before the effective
17 date, to the persons specified in subsection (15) of this section.

18 “(2)(a) The notice required by subsection (1) of this section must include:

19 “(A) A caption of not more than 15 words that reasonably identifies the
20 subject matter of the agency’s intended action. The agency shall include the
21 caption on each separate notice, statement, certificate or other similar doc-
22 ument related to the intended action.

23 “(B) An objective, simple and understandable statement summarizing the
24 subject matter and purpose of the intended action in sufficient detail to in-
25 form a person that the person’s interests may be affected, and the time, place
26 and manner in which interested persons may present their views on the in-
27 tended action.

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

30 “(A) A citation of the statutory or other legal authority relied upon and

1 bearing upon the promulgation of the rule;

2 “(B) A citation of the statute or other law the rule is intended to imple-
3 ment;

4 “(C) A statement of the need for the rule and a statement of how the rule
5 is intended to meet the need;

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

11 “(E) A statement of fiscal impact identifying state agencies, units of local
12 government and the public that may be economically affected by the
13 adoption, amendment or repeal of the rule and an estimate of that economic
14 impact on state agencies, units of local government and the public. In con-
15 sidering the economic effect of the proposed action on the public, the agency
16 shall utilize available information to project any significant economic effect
17 of that action on businesses which shall include a cost of compliance effect
18 on small businesses affected. For an agency specified in ORS 183.530, the
19 statement of fiscal impact shall also include a housing cost impact statement
20 as described in ORS 183.534;

21 **“(F) A statement identifying how adoption of the rule will affect**
22 **racial equity in this state;**

23 “[*F*] (G) If an advisory committee is not appointed under the provisions
24 of ORS 183.333, an explanation as to why no advisory committee was used
25 to assist the agency in drafting the rule; and

26 “[*G*] (H) A request for public comment on whether other options should
27 be considered for achieving the rule’s substantive goals while reducing the
28 negative economic impact of the rule on business.

29 “(c) The Secretary of State may omit the information submitted under
30 paragraph (b) of this subsection from publication in the bulletin referred to

1 in ORS 183.360.

2 “(d) When providing notice of an intended action under subsection (1)(c)
3 of this section, the agency shall provide a copy of the rule that the agency
4 proposes to adopt, amend or repeal, or an explanation of how the person may
5 acquire a copy of the rule. The copy of an amended rule shall show all
6 changes to the rule by striking through material to be deleted and under-
7 lining all new material, or by any other method that clearly shows all new
8 and deleted material.

9 “(3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall
10 give interested persons reasonable opportunity to submit data or views. Op-
11 portunity for oral hearing shall be granted upon request received from 10
12 persons or from an association having not less than 10 members before the
13 earliest date that the rule could become effective after the giving of notice
14 pursuant to subsection (1) of this section. An agency holding a hearing upon
15 a request made under this subsection shall give notice of the hearing at least
16 21 days before the hearing to the person who has requested the hearing, to
17 persons who have requested notice pursuant to subsection (8) of this section
18 and to the persons specified in subsection (15) of this section. The agency
19 shall publish notice of the hearing in the bulletin referred to in ORS 183.360
20 at least 14 days before the hearing. The agency shall consider fully any
21 written or oral submission.

22 “(b) If an agency is required to conduct an oral hearing under paragraph
23 (a) of this subsection, and the rule for which the hearing is to be conducted
24 applies only to a limited geographical area within this state, or affects only
25 a limited geographical area within this state, the hearing shall be conducted
26 within the geographical area at the place most convenient for the majority
27 of the residents within the geographical area. At least 14 days before a
28 hearing conducted under this paragraph, the agency shall publish notice of
29 the hearing in the bulletin referred to in ORS 183.360 and in a newspaper
30 of general circulation published within the geographical area that is affected

1 by the rule or to which the rule applies. If a newspaper of general circulation
2 is not published within the geographical area that is affected by the rule or
3 to which the rule applies, the publication shall be made in the newspaper
4 of general circulation published closest to the geographical area.

5 “(c) Notwithstanding paragraph (a) of this subsection, the Department of
6 Corrections and the State Board of Parole and Post-Prison Supervision may
7 adopt rules limiting participation by adults in custody in the proposed
8 adoption, amendment or repeal of any rule to written submissions.

9 “(d) If requested by at least five persons before the earliest date that the
10 rule could become effective after the agency gives notice pursuant to sub-
11 section (1) of this section, the agency shall provide a statement that identi-
12 fies the objective of the rule and a statement of how the agency will
13 subsequently determine whether the rule is in fact accomplishing that ob-
14 jective.

15 “(e) An agency that receives data or views concerning proposed rules from
16 interested persons shall maintain a record of the data or views submitted.
17 The record shall contain:

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

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

22 “(C) Any public comment received in response to the request made under
23 subsection [(2)(b)(G)] **(2)(b)(H)** of this section and the agency’s response to
24 that comment.

25 “(D) Any statements provided by the agency under paragraph (d) of this
26 subsection.

27 “(4) Upon request of an interested person received before the earliest date
28 that the rule could become effective after the giving of notice pursuant to
29 subsection (1) of this section, the agency shall postpone the date of its in-
30 tended action no less than 21 nor more than 90 days in order to allow the

1 requesting person an opportunity to submit data, views or arguments con-
2 cerning the proposed action. Nothing in this subsection shall preclude an
3 agency from adopting a temporary rule pursuant to subsection (5) of this
4 section.

5 “(5) Notwithstanding subsections (1) to (4) of this section, an agency may
6 adopt, amend or suspend a rule without prior notice or hearing or upon any
7 abbreviated notice and hearing that it finds practicable, if the agency pre-
8 pares:

9 “(a) A statement of its findings that its failure to act promptly will result
10 in serious prejudice to the public interest or the interest of the parties con-
11 cerned and the specific reasons for its findings of prejudice;

12 “(b) A citation of the statutory or other legal authority relied upon and
13 bearing upon the promulgation of the rule;

14 “(c) A statement of the need for the rule and a statement of how the rule
15 is intended to meet the need;

16 “(d) A list of the principal documents, reports or studies, if any, prepared
17 by or relied upon by the agency in considering the need for and in preparing
18 the rule, and a statement of the location at which those documents are
19 available for public inspection; and

20 “(e) For an agency specified in ORS 183.530, a housing cost impact state-
21 ment as defined in ORS 183.534.

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

27 “(b) A rule temporarily suspended shall regain effectiveness upon expira-
28 tion of the temporary period of suspension unless the rule is repealed under
29 subsections (1) to (4) of this section.

30 “(7) Notwithstanding subsections (1) to (4) of this section, an agency may

1 amend a rule without prior notice or hearing if the amendment is solely for
2 the purpose of:

3 “(a) Changing the name of an agency by reason of a name change pre-
4 scribed by law;

5 “(b) Changing the name of a program, office or division within an agency
6 as long as the change in name does not have a substantive effect on the
7 functions of the program, office or division;

8 “(c) Correcting spelling;

9 “(d) Correcting grammatical mistakes in a manner that does not alter the
10 scope, application or meaning of the rule;

11 “(e) Correcting statutory or rule references; or

12 “(f) Correcting addresses or telephone numbers referred to in the rules.

13 “(8)(a) Any person may request in writing that an agency send to the
14 person copies of the agency’s notices of intended action issued under sub-
15 section (1) of this section. The person must provide an address where the
16 person elects to receive notices. The address provided may be a postal mail-
17 ing address or, if the agency provides notice by electronic mail, may be an
18 electronic mailing address.

19 “(b) A request under this subsection must indicate that the person re-
20 quests one of the following:

21 “(A) The person may request that the agency mail paper copies of the
22 proposed rule and other information required by subsection (2) of this section
23 to the postal mailing address.

24 “(B) If the agency posts notices of intended action on a website, the per-
25 son may request that the agency mail the information required by subsection
26 (2)(a) of this section to the postal mailing address with a reference to the
27 website where electronic copies of the proposed rule and other information
28 required by subsection (2) of this section are posted.

29 “(C) The person may request that the agency electronically mail the in-
30 formation required by subsection (2)(a) of this section to the electronic

1 mailing address, and either provide electronic copies of the proposed rule and
2 other information required by subsection (2) of this section or provide a
3 reference to a website where electronic copies of the proposed rule and other
4 information required by subsection (2) of this section are posted.

5 “(c) Upon receipt of any request under this subsection, the agency shall
6 acknowledge the request, establish a mailing list and maintain a record of
7 all mailings made pursuant to the request. Agencies may establish proce-
8 dures for establishing the mailing lists and keeping the mailing lists current.
9 Agencies by rule may establish fees necessary to defray the costs of mailings
10 and maintenance of the lists.

11 “(d) Members of the Legislative Assembly who receive notices under
12 subsection (15) of this section may request that an agency furnish paper
13 copies of the notices.

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

17 “(10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to
18 279A.161, 279A.250 to 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to
19 279B.240, 279B.270, 279B.275, 279B.280, 279C.360, 279C.365, 279C.370, 279C.375,
20 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545, 279C.550 to
21 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to
22 279C.670 and 279C.800 to 279C.870 relating to public contracts and purchas-
23 ing.

24 “(11)(a) Except as provided in paragraph (c) of this subsection, a rule is
25 not valid unless adopted in substantial compliance with the provisions of this
26 section in effect on the date that the notice required under subsection (1)
27 of this section is delivered to the Secretary of State for the purpose of pub-
28 lication in the bulletin referred to in ORS 183.360.

29 “(b) In addition to all other requirements with which rule adoptions must
30 comply, a rule other than a rule amended for a purpose described in sub-

1 section (7) of this section is not valid if the rule has not been submitted to
2 the Legislative Counsel in the manner required by ORS 183.355 and 183.715.

3 “(c) A rule is not subject to judicial review or other challenge by reason
4 of failing to comply with subsection (2)(a)(A) of this section.

5 “(12)(a) Notwithstanding the provisions of subsection (11) of this section,
6 but subject to paragraph (b) of this subsection, an agency may correct its
7 failure to substantially comply with the requirements of subsections (2) and
8 (5) of this section in adoption of a rule by an amended filing, as long as the
9 noncompliance did not substantially prejudice the interests of persons to be
10 affected by the rule.

11 “(b) An agency may use an amended filing to correct a failure to include
12 a fiscal impact statement in a notice of intended action, as required by sub-
13 section (2)(b)(E) of this section, or to correct an inaccurate fiscal impact
14 statement, only if the agency developed the fiscal impact statement with the
15 assistance of an advisory committee or fiscal impact advisory committee ap-
16 pointed under ORS 183.333.

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

20 “(14) When an agency has established a deadline for comment on a pro-
21 posed rule under the provisions of subsection (3)(a) of this section, the
22 agency may not extend that deadline for another agency or person unless the
23 extension applies equally to all interested agencies and persons. An agency
24 shall not consider any submission made by another agency after the final
25 deadline has passed.

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

28 “(a) If the proposed adoption, amendment or repeal results from legis-
29 lation that was passed within two years before notice is given under sub-
30 section (1) of this section, notice shall be given to the legislator who

1 introduced the bill that subsequently was enacted into law, and to the chair
2 or cochairs of all committees that reported the bill out, except for those
3 committees whose sole action on the bill was referral to another committee.

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

9 “(c) If notice cannot be given under paragraph (a) or (b) of this sub-
10 section, notice shall be given to the Speaker of the House of Representatives
11 and to the President of the Senate who are in office on the date the notice
12 is given.

13 “(16)(a) Upon the request of a member of the Legislative Assembly or of
14 a person who would be affected by a proposed adoption, amendment or re-
15 peal, the committees receiving notice under subsection (15) of this section
16 shall review the proposed adoption, amendment or repeal for compliance with
17 the legislation from which the proposed adoption, amendment or repeal re-
18 sults.

19 “(b) The committees shall submit their comments on the proposed
20 adoption, amendment or repeal to the agency proposing the adoption,
21 amendment or repeal.

22 **“SECTION 3. The amendments to ORS 183.333 and 183.335 by**
23 **sections 1 and 2 of this 2021 Act apply to notices of intent to adopt**
24 **rules filed on or after the effective date of this 2021 Act.”.**

25
