

# House Bill 2995

Sponsored by Representative SCHARF (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**.

Expands duties of Legislative Policy and Research Director to include investigating, reviewing activities of and conducting oversight of executive branch agencies, taking in and investigating complaints by members of public concerning executive branch agency programs and reporting to relevant legislative committees on oversight work undertaken by director.

Provides that duties director must perform become operative January 1, 2024.

Modifies existing administrative rule review process to expand scope of review of newly adopted or amended rules by Legislative Counsel to include review of whether rule promotes, implements or carries out legislative direction or policy of subject of rule. Expands scope of review by interim committee having oversight of agency adopting rule to include determination of whether rule carries out legislative direction or policy or fails to do so. Directs Legislative Counsel to post committee's determination of legal flaw in rule on Legislative Counsel website.

Provides that expanded scope of review of administrative rules becomes operative January 1, 2024.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to legislative oversight of executive branch actions; creating new provisions; amending ORS 173.635, 183.720 and 183.722; and prescribing an effective date.

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

## LEGISLATIVE OVERSIGHT AND ACCOUNTABILITY

**SECTION 1.** ORS 173.635 is amended to read:

173.635. (1) The Legislative Policy and Research Director shall, subject to available resources:

(a) Prepare or assist in the preparation of legislative research and otherwise facilitate the development of legislative policy, when requested to do so by a member or committee of the Legislative Assembly;

(b) Provide advice and assistance to legislative committees;

(c) Exercise continuing supervision, coordination and support of clerical and administrative services to legislative standing and interim committees, including consideration of adequacy of staff and administrative services for these committees; *[and]*

(d) Provide research facilities and services to members and committees of the Legislative Assembly[.];

**(e) At the direction of a legislative committee, investigate, review the activities and actions of and conduct oversight of executive branch agencies, programs and functions to identify opportunities and areas of improvement to make agency functions, operations and programs more effective, efficient, transparent and responsive; and**

**(f) Take in and act upon complaints made by members of the public concerning executive**

**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 **branch agency actions by investigating and ascertaining the extent to which agency func-**  
 2 **tions or program objectives are being met, and report findings to the appropriate legislative**  
 3 **committee and to complainants.**

4 (2) The director may employ and fix the compensation of such professional assistants and other  
 5 employees as the director deems necessary for the work under the charge of the director.

6 (3) The director may enter into contracts to carry out the functions of the director.

7 **SECTION 2. The amendments to ORS 173.635 by section 1 of this 2023 Act become oper-**  
 8 **ative on January 1, 2024.**

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 10 **LEGISLATIVE COUNSEL COMMITTEE**  
 11 **ADMINISTRATIVE RULE REVIEW**  
 12

13 **SECTION 3.** ORS 183.720 is amended to read:

14 183.720. (1) The Legislative Counsel may review, or shall review at the direction of the Legis-  
 15 lative Counsel Committee, a proposed rule or an adopted rule of a state agency.

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

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

22 (a) Determine whether the rule appears to be within the intent and scope of the enabling legis-  
 23 lation purporting to authorize its adoption; *[and]*

24 (b) Determine whether the rule raises any constitutional issue other than described in paragraph  
 25 (a) of this subsection, and if so, the nature of the issue; **and**

26 **(c) Determine whether the rule promotes, implements or otherwise carries out the leg-**  
 27 **islative direction or policy of the subject of the rule.**

28 (4) In making a determination under subsection (3)*[(a)]* of this section, the Legislative Counsel  
 29 shall, wherever possible, follow generally accepted principles of statutory construction.

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

32 (6) When a review of a rule is made by the Legislative Counsel, the Legislative Counsel shall  
 33 send a copy of the determinations made under subsection (3) of this section to the appropriate in-  
 34 terim committee or, if the review was requested by a member of the Legislative Assembly or by a  
 35 person affected by the rule, to the person requesting the review. If the Legislative Counsel deter-  
 36 mines that a rule is not within the intent and scope of the enabling legislation purporting to au-  
 37 thorize the state agency's adoption of the rule, *[or]* that the rule raises a constitutional issue*[,]* **or**  
 38 **that the rule fails to promote, implement or carry out the legislative direction or policy of**  
 39 **the subject of the rule**, the Legislative Counsel shall also send a copy of the determination to the  
 40 agency. The Legislative Counsel *[may]* **shall** request that the state agency respond in writing to the  
 41 determinations or appear at the meeting of the interim committee at which the committee will con-  
 42 sider the determinations. The interim committee may direct the Legislative Counsel to send a copy  
 43 of the determinations to the presiding officer of a house of the Legislative Assembly, who may refer  
 44 the determinations to any legislative committee concerned.

45 (7)(a) A member of the Legislative Assembly may request that Legislative Counsel prepare a

1 report on a rule adopted by a state agency that the member asserts is duplicative of or conflicts  
 2 with another rule. A person affected by a rule adopted by a state agency may request that Legisla-  
 3 tive Counsel prepare a report on the rule if the person asserts that the rule is duplicative of or  
 4 conflicts with another rule. A request for a report must be in writing and contain copies of the two  
 5 rules that are claimed to be duplicative or conflicting. The second rule may be either a rule adopted  
 6 by a state agency or a rule or regulation adopted by a federal agency.

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

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

11 (ii) Legislative Counsel's analysis of the requirements of the two rules.

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

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

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

22 **SECTION 4.** ORS 183.722 is amended to read:

23 183.722. (1)(a) If the Legislative Counsel determines under ORS 183.720 (3) that a proposed or  
 24 adopted rule is not within the intent and scope of the enabling legislation purporting to authorize  
 25 the rule's adoption, [or] that the rule is not constitutional **or that the rule fails to promote, im-**  
 26 **plement or carry out a legislative direction or policy relating to the subject of the rule,** and  
 27 the Legislative Counsel has provided a copy of that determination to the state agency pursuant to  
 28 183.720 (6), the agency shall either make a written response to the determination or appear at the  
 29 meeting of the interim committee at which the committee will consider the determinations. The re-  
 30 sponse of the state agency shall indicate if the agency intends to repeal, amend or take other action  
 31 with respect to the rule.

32 (b) The interim committee shall consider the Legislative Counsel determination described in  
 33 paragraph (a) of this subsection and any state agency response to the determination. If the interim  
 34 committee adopts the Legislative Counsel determination, the Legislative Counsel shall post the de-  
 35 termination on the Legislative Counsel website[.] **under the heading "Rules Legislative Assembly**  
 36 **has identified as legally flawed."** Adopted determinations that are posted on the website shall be  
 37 organized by OAR number and shall remain on the website until the earlier of the date that:

38 (A) The rule is modified and the [Legislative Counsel] **interim committee that originally con-**  
 39 **sidered the rule, or its successor,** determines that the modified rule is within the intent and scope  
 40 of the enabling legislation, **is otherwise constitutional and carries out the legislative direction**  
 41 **or policy that relates to the subject of the rule;**

42 (B) A court makes a final determination that the rule is within the intent and scope of the en-  
 43 abling legislation [and], is otherwise constitutional **and carries out the legislative direction or**  
 44 **policy that relates to the subject of the rule,** all appeals of the court's determination are ex-  
 45 hausted and the state agency notifies the Legislative Counsel of the determination; or

1 (C) The Legislative Assembly modifies the enabling legislation so as to bring the rule within the  
 2 intent and scope of the enabling legislation **and related legislative direction or policy**, any other  
 3 constitutional defect in the rule is cured and the state agency notifies the Legislative Counsel of the  
 4 modification or cure.

5 (2) If the Legislative Counsel determines under ORS 183.720 (3) that a proposed or adopted rule  
 6 is not within the intent and scope of the enabling legislation purporting to authorize the rule's  
 7 adoption, [or] that the rule is not constitutional **or that the rule fails to promote, implement or**  
 8 **carry out a legislative direction or policy relating to the subject of the rule**, and the interim  
 9 committee is not satisfied with the response to those issues made by the state agency, the committee  
 10 may request that one or more representatives of the agency appear at a subsequent meeting of the  
 11 committee along with a representative of the Oregon Department of Administrative Services for the  
 12 purpose of further explaining the position of the agency.

13 (3) If a state agency is requested under subsection (2) of this section to appear at a subsequent  
 14 meeting of the interim committee along with a representative of the Oregon Department of Admin-  
 15 istrative Services, the agency shall promptly notify the department of the request. The notification  
 16 to the department must be in writing, and must include a copy of the determinations made by the  
 17 Legislative Counsel and a copy of any written response made by the state agency to the determi-  
 18 nations.

19 (4) **An adopted rule that the Legislative Counsel has found to be within the intent and**  
 20 **scope of the enabling legislation, constitutional and consistent with a legislative direction and**  
 21 **policy shall be deemed to have received the approval of the interim committee, except that**  
 22 **if any member of the interim committee requests committee review of the rule, the rule may**  
 23 **not be deemed approved by the committee.**

24 **SECTION 5. The amendments to ORS 183.720 and 183.722 by sections 3 and 4 of this 2023**  
 25 **Act become operative on January 1, 2024.**

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 27 **CAPTIONS**

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 29 **SECTION 6. The unit captions used in this 2023 Act are provided only for the convenience**  
 30 **of the reader and do not become part of the statutory law of this state or express any leg-**  
 31 **islative intent in the enactment of this 2023 Act.**

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 33 **EFFECTIVE DATE**

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 35 **SECTION 7. This 2023 Act takes effect on the 91st day after the date on which the 2023**  
 36 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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