

## HOUSE AMENDMENTS TO HOUSE BILL 2243

By COMMITTEE ON GOVERNMENT ACCOUNTABILITY AND INFORMATION  
TECHNOLOGY

May 4

1 On page 1 of the printed bill, line 2, after the semicolon insert “creating new provisions;” and  
2 delete “183.705, 377.730” and insert “183.335, 183.705”.

3 In line 6, after “726.125” insert “, 835.106” and after “837.020” insert “and section 1, chapter 73,  
4 Oregon Laws 2005; and repealing sections 2 and 3, chapter 73, Oregon Laws 2005”.

5 On page 2, delete lines 17 through 34 and insert:

6 “**NOTE:** Section 2 was deleted by amendment. Subsequent sections were not renumbered.”.

7 On page 29, line 19, delete “department” and insert “board”.

8 On page 36, after line 11, insert:

9 “**SECTION 58.** ORS 183.335 is amended to read:

10 “183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice  
11 of its intended action:

12 “(a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which  
13 provides a reasonable opportunity for interested persons to be notified of the agency’s proposed  
14 action;

15 “(b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

16 “(c) At least 28 days before the effective date, to persons who have requested notice pursuant  
17 to subsection (8) of this section; and

18 “(d) At least 49 days before the effective date, to the persons specified in subsection (15) of this  
19 section.

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

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

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

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

30 “(A) A citation of the statutory or other legal authority relied upon and bearing upon the  
31 promulgation of the rule;

32 “(B) A citation of the statute or other law the rule is intended to implement;

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

35 “(D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by

1 the agency in considering the need for and in preparing the rule, and a statement of the location  
2 at which those documents are available for public inspection. The list may be abbreviated if neces-  
3 sary, and if so abbreviated there shall be identified the location of a complete list;

4 “(E) A statement of fiscal impact identifying state agencies, units of local government and the  
5 public which may be economically affected by the adoption, amendment or repeal of the rule and  
6 an estimate of that economic impact on state agencies, units of local government and the public. In  
7 considering the economic effect of the proposed action on the public, the agency shall utilize avail-  
8 able information to project any significant economic effect of that action on businesses which shall  
9 include a cost of compliance effect on small businesses affected. For an agency specified in ORS  
10 183.530, the statement of fiscal impact shall also include a housing cost impact statement as de-  
11 scribed in ORS 183.534;

12 “(F) If an advisory committee is not appointed under the provisions of ORS 183.333, an expla-  
13 nation as to why no advisory committee was used to assist the agency in drafting the rule; and

14 “(G) A request for public comment on whether other options should be considered for achieving  
15 the rule’s substantive goals while reducing the negative economic impact of the rule on business.

16 “(c) The Secretary of State may omit the information submitted under paragraph (b) of this  
17 subsection from publication in the bulletin referred to in ORS 183.360.

18 “(d) When providing notice of an intended action under subsection (1)(c) of this section, the  
19 agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an  
20 explanation of how the person may acquire a copy of the rule. The copy of an amended rule shall  
21 show all changes to the rule by striking through material to be deleted and underlining all new  
22 material, or by any other method that clearly shows all new and deleted material.

23 “(e) Notice of an intended action under subsection (1)(a), (c) and (d) of this section may be given  
24 by regular mail or by electronic mail.

25 “(3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested per-  
26 sons reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted  
27 upon request received from 10 persons or from an association having not less than 10 members be-  
28 fore the earliest date that the rule could become effective after the giving of notice pursuant to  
29 subsection (1) of this section. An agency holding a hearing upon a request made under this sub-  
30 section shall give notice of the hearing at least 21 days before the hearing to the person who has  
31 requested the hearing, to persons who have requested notice pursuant to subsection (8) of this sec-  
32 tion and to the persons specified in subsection (15) of this section. The agency shall publish notice  
33 of the hearing in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The  
34 agency shall consider fully any written or oral submission.

35 “(b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection,  
36 and the rule for which the hearing is to be conducted applies only to a limited geographical area  
37 within this state, or affects only a limited geographical area within this state, the hearing shall be  
38 conducted within the geographical area at the place most convenient for the majority of the resi-  
39 dents within the geographical area. At least 14 days before a hearing conducted under this para-  
40 graph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and  
41 in a newspaper of general circulation published within the geographical area that is affected by the  
42 rule or to which the rule applies. If a newspaper of general circulation is not published within the  
43 geographical area that is affected by the rule or to which the rule applies, the publication shall be  
44 made in the newspaper of general circulation published closest to the geographical area.

45 “(c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the

1 State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by inmates  
2 in the proposed adoption, amendment or repeal of any rule to written submissions.

3 “(d) If requested by at least five persons before the earliest date that the rule could become ef-  
4 fective after the agency gives notice pursuant to subsection (1) of this section, the agency shall  
5 provide a statement that identifies the objective of the rule and a statement of how the agency will  
6 subsequently determine whether the rule is in fact accomplishing that objective.

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

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

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

13 “(C) Any public comment received in response to the request made under subsection (2)(b)(G)  
14 of this section and the agency’s response to that comment.

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

16 “(4) Upon request of an interested person received before the earliest date that the rule could  
17 become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall  
18 postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the  
19 requesting person an opportunity to submit data, views or arguments concerning the proposed  
20 action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant  
21 to subsection (5) of this section.

22 “(5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or sus-  
23 pend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds  
24 practicable, if the agency prepares:

25 “(a) A statement of its findings that its failure to act promptly will result in serious prejudice  
26 to the public interest or the interest of the parties concerned and the specific reasons for its findings  
27 of prejudice;

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

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

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

35 “(e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS  
36 183.534.

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

41 “(b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary  
42 period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

43 “(7) Notwithstanding subsections (1) to (4) of this section, an agency may amend a rule without  
44 prior notice or hearing if the amendment is solely for the purpose of:

45 “(a) Changing the name of an agency by reason of a name change prescribed by law;

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

4       **“[(b)] (c) Correcting spelling;**

5       **“[(c)] (d) Correcting grammatical mistakes in a manner that does not alter the scope, application**  
6 **or meaning of the rule; [or]**

7       **“[(d)] (e) Correcting statutory references; or**

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

9       **“(8) Any person may request in writing that an agency send to the person copies of its notices**  
10 **of intended action given pursuant to subsection (1) of this section. The person must provide a mail-**  
11 **ing address or electronic mail address. Upon receipt of any request the agency shall acknowledge**  
12 **the request, establish a mailing list and maintain a record of all mailings made pursuant to the re-**  
13 **quest. Agencies may establish procedures for establishing and maintaining the mailing lists current**  
14 **and, by rule, establish fees necessary to defray the costs of mailings and maintenance of the lists.**

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

17       **“(10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.155, 279A.250 to**  
18 **279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280,**  
19 **279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545,**  
20 **279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and**  
21 **279C.800 to 279C.870 relating to public contracts and purchasing.**

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

26       **“(b) In addition to all other requirements with which rule adoptions must comply, a rule is not**  
27 **valid if the rule has not been submitted to the Legislative Counsel in the manner required by ORS**  
28 **183.715.**

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

31       **“(12)(a) Notwithstanding the provisions of subsection (11) of this section, but subject to para-**  
32 **graph (b) of this subsection, an agency may correct its failure to substantially comply with the re-**  
33 **quirements of subsections (2) and (5) of this section in adoption of a rule by an amended filing, as**  
34 **long as the noncompliance did not substantially prejudice the interests of persons to be affected by**  
35 **the rule.**

36       **“(b) An agency may use an amended filing to correct a failure to include a fiscal impact state-**  
37 **ment in a notice of intended action, as required by subsection (2)(b)(E) of this section, or to correct**  
38 **an inaccurate fiscal impact statement, only if the agency developed the fiscal impact statement with**  
39 **the assistance of an advisory committee or fiscal impact advisory committee appointed under ORS**  
40 **183.333.**

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

43       **“(14) When an agency has established a deadline for comment on a proposed rule under the**  
44 **provisions of subsection (3)(a) of this section, the agency may not extend that deadline for another**  
45 **agency or person unless the extension applies equally to all interested agencies and persons. An**

1 agency shall not consider any submission made by another agency after the final deadline has  
2 passed.

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

5 “(a) If the proposed adoption, amendment or repeal results from legislation that was passed  
6 within two years before notice is given under subsection (1) of this section, notice shall be given to  
7 the legislator who introduced the bill that subsequently was enacted into law, and to the chair or  
8 cochairs of all committees that reported the bill out, except for those committees whose sole action  
9 on the bill was referral to another committee.

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

14 “(c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given  
15 to the Speaker of the House of Representatives and to the President of the Senate who are in office  
16 on the date the notice is given.

17 “(16)(a) Upon the request of a member of the Legislative Assembly or of a person who would  
18 be affected by a proposed adoption, amendment or repeal, the committees receiving notice under  
19 subsection (15) of this section shall review the proposed adoption, amendment or repeal for compli-  
20 ance with the legislation from which the proposed adoption, amendment or repeal results.

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

23 “**SECTION 59.** Section 1, chapter 73, Oregon Laws 2005, is amended to read:

24 “**Sec. 1.** (1) The Department of Consumer and Business Services may establish one or more  
25 combined license processing [*pilot projects*] **programs**. Participation in a combined license process-  
26 ing [*pilot project*] **program** by a state agency is voluntary. Notwithstanding any other provision of  
27 law, agencies participating in a combined license processing [*pilot project*] **program** may:

28 “(a) Use combined license applications;

29 “(b) Adopt standardized license terms under subsection (2) of this section;

30 “(c) Charge adjusted license fees established under subsection (2) of this section;

31 “(d) Issue combined license documents; and

32 “(e) Take any other action authorized under rules adopted pursuant to subsection [(4)] (3) of this  
33 section that provides a simplified procedure for processing licenses issued pursuant to the [*pilot*  
34 *project*] **program**.

35 “(2) Notwithstanding any other provision of law, the Department of Consumer and Business  
36 Services may establish a standardized term for licenses of state agencies participating in a combined  
37 license processing [*pilot project*] **program**. If the department establishes a standardized term under  
38 the provisions of this subsection, the agencies participating in the [*project*] **program** shall adjust the  
39 fees established by statute for each license in an appropriate manner to ensure that there is no re-  
40 venue loss by reason of the change in the term of the license.

41 “[3] *As soon as possible after the effective date of this 2005 Act, the Department of Consumer and*  
42 *Business Services shall prepare a proposal for combined license processing pilot projects for the*  
43 *Oregon Liquor Control Commission, the Department of Environmental Quality and the State Depart-*  
44 *ment of Agriculture. The proposal shall specify the manner in which those agencies may offer combined*  
45 *license processing for retail establishments that are licensed by one or more of those agencies.*]

1       “[(4)] (3) The Department of Consumer and Business Services may adopt rules necessary for  
2 implementation of combined license processing [*pilot projects*] **programs**. Any agency participating  
3 in a combined license processing [*pilot project*] **program** may:

4       “(a) Agree to be bound by the rules adopted by the Department of Consumer and Business Ser-  
5 vices; and

6       “(b) Adopt any other rules necessary for participation in a combined license processing [*pilot*  
7 *project*] **program**.

8       “**SECTION 60. Sections 2 and 3, chapter 73, Oregon Laws 2005, are repealed.**

9       “**SECTION 61. If an agency of the executive department, as defined in ORS 174.112, enters**  
10 **into a contract with a county or other public body, as defined in ORS 174.109, for the purpose**  
11 **of issuing licenses on behalf of the agency, the agency, by rule, shall provide that payment**  
12 **for the licenses be made directly to the agency if:**

13       “(1) **The agency has implemented a functioning licensing software system that is ap-**  
14 **proved by the Oregon Department of Administrative Services; and**

15       “(2) **The agency pays to the county or other public body the same amounts under the**  
16 **contract that the county or other public body would have received if the county or other**  
17 **public body had collected the license fees.**

18       “**SECTION 62.** ORS 835.106 is amended to read:

19       “835.106. (1) The Governor shall appoint the Director of the Oregon Department of Aviation,  
20 subject to confirmation by the Senate pursuant to ORS 171.562 and 171.565, who holds office at the  
21 pleasure of the Governor.

22       “[(2) *The Governor may not appoint a person as director unless the person has experience in air-*  
23 *port operations or management.*]

24       “[(3)] (2) Subject to policy direction by the State Aviation Board, the director shall:

25       “(a) Be the administrative head of the department;

26       “(b) Have power, within applicable budgetary limitations, and in accordance with ORS chapter  
27 240, to hire, assign, reassign and coordinate personnel of the department and prescribe their duties  
28 and fix their compensation, subject to the State Personnel Relations Law;

29       “(c) Administer the laws of the state concerning aviation; and

30       “(d) Intervene, as authorized by the board, pursuant to the rules of practice and procedure, in  
31 the proceedings of state and federal agencies that may substantially affect the interests of the con-  
32 sumers and providers of aviation services within Oregon.

33       “[(4)] (3) In addition to duties otherwise required by law, the director shall prescribe regulations  
34 for the government of the department, the conduct of its employees, the assignment and performance  
35 of its business and the custody, use and preservation of its records, papers and property in a manner  
36 consistent with applicable law.

37       “[(5)] (4) The director may delegate to any of the employees of the department the exercise or  
38 discharge in the director’s name of any duty, function or power of whatever character, vested in or  
39 imposed by law upon the director, including duties, functions or powers delegated to the director  
40 by the board. The official act of any person acting in the director’s name and by the authority of  
41 the director shall be considered to be an official act of the director.

42       “[(6)] (5) The director shall have authority to require a fidelity bond of any officer or employee  
43 of the department who has charge of, handles or has access to any state money or property, and  
44 who is not otherwise required by law to give a bond. The amounts of the bonds shall be fixed by the  
45 director, except as otherwise provided by law, and the sureties shall be approved by the director.

1 The department shall pay the premiums on the bonds.

2       “[(7)] **(6)** The director shall prepare and submit to the board on or about December 31 of each  
3 year an annual report for the 12 months ending the prior June 30. The annual report shall set forth  
4 all that the department has done during the year. The report shall contain a statement of the parts  
5 of the state aviation system that were constructed, reconstructed or improved during the period,  
6 together with a statement showing in a general way the status of the state aviation system.”.

7

---