

HB 2991-1
(LC 1809)
2/19/21 (DJ/ps)

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

**PROPOSED AMENDMENTS TO
HOUSE BILL 2991**

1 On page 1 of the printed bill, line 2, after “statements;” insert “creating
2 new provisions; amending ORS 183.335;”.

3 On page 2, after line 14, insert:

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

5 “183.335. (1) Prior to the adoption, amendment or repeal of any rule, the
6 agency shall give notice of its intended action:

7 “(a) In the manner established by rule adopted by the agency under ORS
8 183.341 (4), which provides a reasonable opportunity for interested persons
9 to be notified of the agency’s proposed action;

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

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

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

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

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

21 “(B) An objective, simple and understandable statement summarizing the

1 subject matter and purpose of the intended action in sufficient detail to in-
2 form a person that the person's interests may be affected, and the time, place
3 and manner in which interested persons may present their views on the in-
4 tended action.

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

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

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

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

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

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

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

30 “[*F*] (G) If an advisory committee is not appointed under the provisions

1 of ORS 183.333, an explanation as to why no advisory committee was used
2 to assist the agency in drafting the rule; and

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

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

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

16 “(3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall
17 give interested persons reasonable opportunity to submit data or views. Op-
18 portunity for oral hearing shall be granted upon request received from 10
19 persons or from an association having not less than 10 members before the
20 earliest date that the rule could become effective after the giving of notice
21 pursuant to subsection (1) of this section. An agency holding a hearing upon
22 a request made under this subsection shall give notice of the hearing at least
23 21 days before the hearing to the person who has requested the hearing, to
24 persons who have requested notice pursuant to subsection (8) of this section
25 and to the persons specified in subsection (15) of this section. The agency
26 shall publish notice of the hearing in the bulletin referred to in ORS 183.360
27 at least 14 days before the hearing. The agency shall consider fully any
28 written or oral submission.

29 “(b) If an agency is required to conduct an oral hearing under paragraph
30 (a) of this subsection, and the rule for which the hearing is to be conducted

1 applies only to a limited geographical area within this state, or affects only
2 a limited geographical area within this state, the hearing shall be conducted
3 within the geographical area at the place most convenient for the majority
4 of the residents within the geographical area. At least 14 days before a
5 hearing conducted under this paragraph, the agency shall publish notice of
6 the hearing in the bulletin referred to in ORS 183.360 and in a newspaper
7 of general circulation published within the geographical area that is affected
8 by the rule or to which the rule applies. If a newspaper of general circulation
9 is not published within the geographical area that is affected by the rule or
10 to which the rule applies, the publication shall be made in the newspaper
11 of general circulation published closest to the geographical area.

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

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

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

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

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

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

1 that comment.

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

4 “(4) Upon request of an interested person received before the earliest date
5 that the rule could become effective after the giving of notice pursuant to
6 subsection (1) of this section, the agency shall postpone the date of its in-
7 tended action no less than 21 nor more than 90 days in order to allow the
8 requesting person an opportunity to submit data, views or arguments con-
9 cerning the proposed action. Nothing in this subsection shall preclude an
10 agency from adopting a temporary rule pursuant to subsection (5) of this
11 section.

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

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

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

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

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

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

29 “(6)(a) A rule adopted, amended or suspended under subsection (5) of this
30 section is temporary and may be effective for a period of not longer than 180

1 days. The adoption of a rule under this subsection does not preclude the
2 subsequent adoption of an identical rule under subsections (1) to (4) of this
3 section.

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

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

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

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

15 “(c) Correcting spelling;

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

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

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

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

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

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

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

6 “(C) The person may request that the agency electronically mail the in-
7 formation required by subsection (2)(a) of this section to the electronic
8 mailing address, and either provide electronic copies of the proposed rule and
9 other information required by subsection (2) of this section or provide a
10 reference to a website where electronic copies of the proposed rule and other
11 information required by subsection (2) of this section are posted.

12 “(c) Upon receipt of any request under this subsection, the agency shall
13 acknowledge the request, establish a mailing list and maintain a record of
14 all mailings made pursuant to the request. Agencies may establish proce-
15 dures for establishing the mailing lists and keeping the mailing lists current.
16 Agencies by rule may establish fees necessary to defray the costs of mailings
17 and maintenance of the lists.

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

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

24 “(10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to
25 279A.161, 279A.250 to 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to
26 279B.240, 279B.270, 279B.275, 279B.280, 279C.360, 279C.365, 279C.370, 279C.375,
27 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545, 279C.550 to
28 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to
29 279C.670 and 279C.800 to 279C.870 relating to public contracts and purchas-
30 ing.

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

6 “(b) In addition to all other requirements with which rule adoptions must
7 comply, a rule other than a rule amended for a purpose described in sub-
8 section (7) of this section is not valid if the rule has not been submitted to
9 the Legislative Counsel in the manner required by ORS 183.355 and 183.715.

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

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

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

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

27 “(14) When an agency has established a deadline for comment on a pro-
28 posed rule under the provisions of subsection (3)(a) of this section, the
29 agency may not extend that deadline for another agency or person unless the
30 extension applies equally to all interested agencies and persons. An agency

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

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

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

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

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

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

26 “(b) The committees shall submit their comments on the proposed
27 adoption, amendment or repeal to the agency proposing the adoption,
28 amendment or repeal.”.

29 In line 15, delete “2” and insert “3”.

30