

COMMENTS OF ELDERS CLIMATE ACTION OPPOSING H.B. 3022

Submitted by

Robert Yuhnke

TO: Chair Pam Marsh and Members, Committee on Climate, Energy and Environment

Elders Climate Action, Oregon Chapter (ECA) opposes H.B. 3022 because it would hamper the ability of Oregon to act through agency rulemaking to address the climate crisis and help protect Oregon communities and families from exposure to pollution emitted from transportation sources.

Oregon law currently establishes an elaborate process for taking agency actions that includes advisory committees designed to provide a forum for interested stakeholders to share views with agency staff and other interests that will be affected or protected by agency action. This process provides multiple opportunities to communicate concerns and objections to agency proposals, and to propose alternative strategies to reduce GHG emissions and other pollutants that adversely affect the health and well-being of at-risk communities.

This process generally requires agencies to present evidence, and offer explanations by staff for the policy approaches they propose. This material becomes part of a record available to the Legislature to review and take action if necessary to protect the public interest.

H.B. 3022 would prohibit DEQ and other agencies from proposing administrative actions to meet critical GHG reduction targets needed to prevent a climate disaster, and protect community health from exposure to a complex mix of hazardous pollutants emitted from motor vehicles. Instead, the Legislature would be required to enact new legislation to either enact a rule, or authorize an agency to promulgate a specific rule.

As a result agencies would be stripped of their authority to identify needs, investigate potential solutions, and propose actions to meet those needs unless the Legislature acted first. The Legislature would be denied the benefit of receiving informed analysis from agencies that would normally be available after a completed rulemaking. Agencies are barred under Oregon law from advocating for legislation. As a result agencies with expertise would not be allowed to share their knowledge and experience with legislators to help inform a legislative decision.

Under current law, the Legislature reserves the authority to amend, revise or repeal any administrative action taken by an agency. This authority ensures that the Legislature has an opportunity to review agency actions, and to modify or prohibit their enforcement if the action is unacceptable. But this approach does not block agencies from undertaking an investigation and developing solutions after engaging in an open dialogue with interested parties.

Post-promulgation review is the procedure enacted in the Congressional Review Act for federal agency rules and regulations. 5 U.S.C. §801, et seq. The Act requires agencies to submit a report to Congress for each rule adopted that describes the scope of the rule, and its basis and purpose. The report triggers a 60 day period for congressional review. Congress may revoke a rule by joint resolution.

The Legislature might want to consider a more formal procedure for reviewing agency actions after the administrative process has been completed, but ECA strongly opposes legislation that removes from agencies the authority to undertake rulemaking proceedings to address critical climate and environmental policies.

Respectfully submitted,

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PA Assistant Attorney General: legal advisor to Air Bureau, represented Department of Environmental Resources in litigation and rulemaking to achieve steel industry compliance with the Clean Air Act.

Senior Attorney, Environmental Defense Fund: created clean air program to stop acid rain, attain NAAQS in U.S. cities; worked with Congress to enact 1990 Clean Air Act Amendments for acid rain, transportation planning.

Southwest Energy Efficiency Project (SWEET), Director, Transportation Program: drafted electric vehicle legislation, and helped MPOs develop transportation plans to reduce regional VMT growth and traffic congestion.

Elders Climate Action, policy team: U.S. Climate Action, co-chair transportation subcommittee; co-author "Vision for Equitable Climate Action."