

D R A F T

SUMMARY

Requires state agency public records policies, and public record retention schedules of state agencies and political subdivisions of this state, to require retention of public records for a minimum of two years.

Requires public bodies to provide standardized acknowledgment of receipt of requests for public records within five business days of receipt of request. Requires public bodies to provide records, or to assert exemption from required disclosure, within 30 days of receipt of request. Permits public body to exceed 30-day deadline if public body provides requester with estimated time that records will be disclosed or exemptions claimed. Permits requesters to petition for administrative or judicial review if public body fails to meet 30-day deadline.

Limits amounts public bodies with 10 or more full-time equivalent employees may charge as fees for producing public records.

Directs county clerks and city elections officers to give notice to Secretary of State regarding petitions for county or local initiative measures, and requires secretary to provide reasonable statewide notice of county or local initiative measures.

Appropriates moneys from General Fund to Secretary of State to implement statewide notice of county or local initiative measures.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to transparency in governmental decision-making; creating new provisions; amending ORS 147.421, 171.427, 192.018, 192.105, 192.440, 192.450, 192.460, 192.465 and 802.183; and declaring an emergency.

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

PUBLIC RECORDS RETENTION

SECTION 1. ORS 192.018 is amended to read:

192.018. (1) Each state agency shall have a written policy that sets forth the agency's use, retention and ownership of public records. The policy shall ensure that public records are being maintained and managed consistently within the agency from the time of creation of a public record to the time of final disposition of the public record.

(2) Each state agency shall submit the written policy and any subsequent amendment of the policy to the State Archivist for approval before the policy takes effect or the amendment to the policy takes effect.

(3) A written policy or amendment of the policy must provide for a retention period for a public record that is at least two years in duration from the time the record is created or comes into the possession of a custodian, as defined in ORS 192.410, until the record may be destroyed.

SECTION 2. ORS 192.105 is amended to read:

192.105. (1)(a) Except as otherwise provided by law, the State Archivist may grant to public officials of the state or any political subdivision specific or continuing authorization for the retention or disposition of public records that are in their custody, after the records have been in existence for a specified period of time. In granting such authorization, the State Archivist shall consider the value of the public records for legal, administrative or research purposes and shall establish rules for procedure for the retention or disposition of the public records.

(b) The State Archivist may not grant authorization under this section for the destruction of a public record that has not been retained for a period of at least two years by the public official who has the public record in custody.

(2)(a) The State Archivist shall provide instructions and forms for obtaining authorization. Upon receipt of an authorization or upon the effective date of the applicable rule, a state official who has public records in custody shall destroy or otherwise dispose of those records that are older than the

specified period of retention established by the authorization or rule. An official of a local government may destroy such records if such destruction is consistent with the policy of the local government. No record of accounts or financial affairs subject to audit shall be destroyed until released for destruction by the responsible auditor or representative of the auditor. If federal funds are involved, records retention requirements of the United States Government must be observed. Each state agency and political subdivision shall designate a records officer to coordinate its records management program and to serve as liaison with the State Archivist. The county records officers for the purposes of ORS 192.001, 192.050, 192.060, 192.105, 192.130, 357.825, 357.835 and 357.875 shall be those officers identified in ORS 205.110. The State Archivist shall require periodic reports from records officers about records management programs. The State Archivist may require state agency records designated as inactive by the State Archivist to be transferred to the State Records Center, pending the availability of space.

(b) The State Archivist shall determine which parts of a public record are acceptable for admission to the State Records Center and may require the state agency or governing body to cause the unacceptable part to be removed before the record is submitted to the State Records Center.

(3) Authorizations granted prior to January 1, 1978, by any state agency, the State Archivist, or any board of county commissioners, to state agencies, schools, school districts, soil and water conservation districts, or county officials and offices shall remain in effect until they are adopted or amended by the State Archivist.

(4) This section does not apply to legislative records, as defined in ORS 171.410.

SECTION 3. ORS 171.427 is amended to read:

171.427. The Legislative Administration Committee and State Archivist shall establish and from time to time may revise a schedule that shall govern the retention and destruction or other disposition of legislative records delivered to and in the custody of the archivist under ORS 171.420 or 171.430

1 and of sound recordings retained by a committee under ORS 171.430 (2). The
2 schedule agreed upon by the committee and archivist shall:

3 (1) Be set forth in the rules and regulations issued by the archivist[.];
4 **and**

5 (2) **Require legislative records to be retained for a period of at least**
6 **two years.**

7
8 **PUBLIC RECORDS PRODUCTION**

9
10 **SECTION 4.** ORS 192.440 is amended to read:

11 192.440. (1) The custodian of any public record that a person has a right
12 to inspect shall give the person, upon request:

13 (a) A copy of the public record if the public record is of a nature per-
14 mitting copying; or

15 (b) A reasonable opportunity to inspect or copy the public record.

16 (2) If a person makes a written request to inspect a public record or to
17 receive a copy of a public record, the public body receiving the request shall
18 respond [*as soon as practicable and without unreasonable delay*] **within five**
19 **business days of receipt of the request.** The public body may request ad-
20 ditional information or clarification from the requester for the purpose of
21 expediting the public body's response to the request. The response of the
22 public body **must be in a standard form**, must acknowledge receipt of the
23 request and must include one of the following:

24 (a) A statement that the public body does not possess, or is not the
25 custodian of, the public record.

26 (b) Copies of all requested public records for which the public body does
27 not claim an exemption from disclosure under ORS 192.410 to 192.505.

28 (c) A statement that the public body is the custodian of at least some of
29 the requested public records, an estimate of the time the public body requires
30 before the public records may be inspected or copies of the records will be
31 provided and an estimate of the fees that the requester must pay under sub-

section [(4)] (5) of this section as a condition of receiving the public records.

(d) A statement that the public body is the custodian of at least some of the requested public records and that an estimate of the time and fees for disclosure of the public records will be provided by the public body within a reasonable time.

(e) A statement that the public body is uncertain whether the public body possesses the public record and that the public body will search for the record and make an appropriate response as soon as practicable.

(f) A statement that state or federal law prohibits the public body from acknowledging whether the record exists or that acknowledging whether the record exists would result in the loss of federal benefits or other sanction. A statement under this paragraph must include a citation to the state or federal law relied upon by the public body.

(3) A public body must within 30 days of receipt of the request:

(a) Produce all requested public records within the possession or custody of the public body;

(b) Claim an exemption from disclosure under ORS 192.410 to 192.505 with respect to requested records and explain with specificity the reason the exemption applies to the requested records; or

(c) State that the public body is still gathering the requested records and provide an estimated date when the requested records will be ready for inspection or delivery to the requester, or when the public body will be able to claim an exemption from disclosure of the requested records.

[(3)] (4) If the public record is maintained in a machine readable or electronic form, the custodian shall provide a copy of the public record in the form requested, if available. If the public record is not available in the form requested, the custodian shall make the public record available in the form in which the custodian maintains the public record.

[(4)(a)] (5)(a) The public body may establish fees reasonably calculated to reimburse the public body for the public body's actual cost of making

1 public records available, including costs for summarizing, compiling or tai-
2 loring the public records, either in organization or media, to meet the
3 person's request.

4 (b) The public body may include in a fee established under paragraph (a)
5 of this subsection the cost of time spent by an attorney for the public body
6 in reviewing the public records, redacting material from the public records
7 or segregating the public records into exempt and nonexempt records. The
8 public body may not include in a fee established under paragraph (a) of this
9 subsection the cost of time spent by an attorney for the public body in de-
10 termining the application of the provisions of ORS 192.410 to 192.505.

11 **(c) Notwithstanding paragraph (a) or (b) of this subsection, a public**
12 **body with 10 or more full-time equivalent employees may not establish**
13 **fees under this subsection in which a component of the fee is the time**
14 **of staff engaged in responding to the request that is calculated at more**
15 **than \$30 per hour.**

16 [(c)] (d) The public body may not establish a fee greater than \$25 under
17 this section unless the public body first provides the requestor with a written
18 notification of the estimated amount of the fee and the requestor confirms
19 that the requestor wants the public body to proceed with making the public
20 record available. **Any period of time after the public body has supplied**
21 **a written estimate to a requester and before the requester confirms**
22 **the requester's interest in proceeding with the request is not taken**
23 **into account in determining the public body's compliance with dead-**
24 **lines established under subsection (3) of this section.**

25 [(d)] (e) Notwithstanding paragraphs (a) to [(c)] (d) of this subsection,
26 when the public records are those filed with the Secretary of State under
27 ORS chapter 79 or ORS 80.100 to 80.130, the fees for furnishing copies, sum-
28 maries or compilations of the public records are those established by the
29 Secretary of State by rule, under ORS chapter 79 or ORS 80.100 to 80.130.

30 [(5)] (6) The custodian of any public record may furnish copies without
31 charge or at a substantially reduced fee if the custodian determines that the

waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

[(6)] (7) A person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney in the same manner as a person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied.

[(7)] (8) A public body shall make available to the public a written procedure for making public record requests that includes:

(a) The name of one or more persons to whom public record requests may be sent, with addresses; and

(b) The amounts of and the manner of calculating fees that the public body charges for responding to requests for public records.

[(8)] (9) This section does not apply to signatures of individuals submitted under ORS chapter 247 for purposes of registering to vote as provided in ORS 247.973.

SECTION 5. ORS 192.450 is amended to read:

192.450. (1) Subject to ORS 192.480 and subsection (4) of this section, any person denied the right to inspect or to receive a copy of any public record of a state agency, **or who has not received copies of the requested records or an opportunity to inspect the requested records within 30 days of the request,** may petition the Attorney General to review the public record to determine if it may be withheld from public inspection **or to determine if the agency is being unreasonably slow in responding to the request.** Except as provided in subsection (5) of this section, the burden is on the agency to sustain its action. Except as provided in subsection (5) of this section, the Attorney General shall issue an order denying or granting the petition, or denying it in part and granting it in part, within seven days from the day the Attorney General receives the petition.

1 (2) If the Attorney General grants the petition and orders the state agency
2 to disclose the record, or if the Attorney General grants the petition in part
3 and orders the state agency to disclose a portion of the record, the state
4 agency shall comply with the order in full within seven days after issuance
5 of the order, unless within the seven-day period it issues a notice of its in-
6 tention to institute proceedings for injunctive or declaratory relief in the
7 Circuit Court for Marion County or, as provided in subsection (6) of this
8 section, in the circuit court of the county where the record is held. Copies
9 of the notice shall be sent to the Attorney General and by certified mail to
10 the petitioner at the address shown on the petition. The state agency shall
11 institute the proceedings within seven days after it issues its notice of in-
12 tention to do so. If the Attorney General denies the petition in whole or in
13 part, or if the state agency continues to withhold the record or a part of it
14 notwithstanding an order to disclose by the Attorney General, the person
15 seeking disclosure may institute such proceedings.

16 (3) The Attorney General shall serve as counsel for the state agency in
17 a suit filed under subsection (2) of this section if the suit arises out of a
18 determination by the Attorney General that the public record should not be
19 disclosed, or that a part of the public record should not be disclosed if the
20 state agency has fully complied with the order of the Attorney General re-
21 quiring disclosure of another part or parts of the public record, and in no
22 other case. In any case in which the Attorney General is prohibited from
23 serving as counsel for the state agency, the agency may retain special
24 counsel.

25 (4) A person denied the right to inspect or to receive a copy of any public
26 record of a health professional regulatory board, as defined in ORS 676.160,
27 that contains information concerning a licensee or applicant, and petitioning
28 the Attorney General to review the public record shall, on or before the date
29 of filing the petition with the Attorney General, send a copy of the petition
30 by first class mail to the health professional regulatory board. Not more than
31 48 hours after the board receives a copy of the petition, the board shall send

1 a copy of the petition by first class mail to the licensee or applicant who is
2 the subject of any record for which disclosure is sought. When sending a
3 copy of the petition to the licensee or applicant, the board shall include a
4 notice informing the licensee or applicant that a written response by the
5 licensee or applicant may be filed with the Attorney General not later than
6 seven days after the date that the notice was sent by the board. Immediately
7 upon receipt of any written response from the licensee or applicant, the At-
8 torney General shall send a copy of the response to the petitioner by first
9 class mail.

10 (5) The person seeking disclosure of a public record of a health profes-
11 sional regulatory board, as defined in ORS 676.160, that is confidential or
12 exempt from disclosure under ORS 676.165 or 676.175, shall have the burden
13 of demonstrating to the Attorney General by clear and convincing evidence
14 that the public interest in disclosure outweighs other interests in
15 nondisclosure, including but not limited to the public interest in
16 nondisclosure. The Attorney General shall issue an order denying or grant-
17 ing the petition, or denying or granting it in part, not later than the 15th
18 day following the day that the Attorney General receives the petition. A
19 copy of the Attorney General's order granting a petition or part of a petition
20 shall be served by first class mail on the health professional regulatory
21 board, the petitioner and the licensee or applicant who is the subject of any
22 record ordered to be disclosed. The health professional regulatory board shall
23 not disclose any record prior to the seventh day following the service of the
24 Attorney General's order on a licensee or applicant entitled to receive notice
25 under this subsection.

26 (6) If the Attorney General grants or denies the petition for a record of
27 a health professional regulatory board, as defined in ORS 676.160, that con-
28 tains information concerning a licensee or applicant, the board, a person
29 denied the right to inspect or receive a copy of the record or the licensee
30 or applicant who is the subject of the record may institute proceedings for
31 injunctive or declaratory relief in the circuit court for the county where the

public record is held. The party seeking disclosure of the record shall have the burden of demonstrating by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure.

(7) The Attorney General may comply with a request of a health professional regulatory board to be represented by independent counsel in any proceeding under subsection (6) of this section.

SECTION 6. ORS 192.460 is amended to read:

192.460. (1) ORS 192.450 applies to the case of a person denied the right to inspect or to receive a copy of any public record of a public body other than a state agency **or when a public body is being unreasonably slow in responding to the request**, except that:

(a) The district attorney of the county in which the public body is located, or if it is located in more than one county the district attorney of the county in which the administrative offices of the public body are located, shall carry out the functions of the Attorney General;

(b) Any suit filed must be filed in the circuit court for the county described in paragraph (a) of this subsection; and

(c) The district attorney may not serve as counsel for the public body, in the cases permitted under ORS 192.450 (3), unless the district attorney ordinarily serves as counsel for the public body.

(2) Disclosure of a record to the district attorney in compliance with subsection (1) of this section does not waive any privilege or claim of privilege regarding the record or its contents.

(3) Disclosure of a record or part of a record as ordered by the district attorney is a compelled disclosure for purposes of ORS 40.285.

SECTION 7. ORS 192.465 is amended to read:

192.465. (1) The failure of the Attorney General or district attorney to issue an order under ORS 192.450 or 192.460 denying, granting, or denying in part and granting in part, a petition to require disclosure within seven days from the day of receipt of the petition shall be treated as an order de-

nying the petition for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.

(2) The failure of an elected official to [*deny, grant, or deny in part and grant in part a request to inspect or receive a copy of a public record within seven*] **issue a response described in ORS 192.440 (2) within five business days from the day of receipt of the request shall be treated as a denial of the request for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.**

(3) The failure of an elected official to provide a requester with copies of requested records, or an opportunity to inspect requested records, within 30 days of receipt of the request shall be treated as a denial of the request for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.

NOTICE OF LOCAL INITIATIVES

SECTION 8. Section 9 of this 2016 Act is added to and made a part of ORS chapter 250.

SECTION 9. (1) Upon receiving a prospective petition for an initiative measure:

(a) Under ORS 250.165, the county clerk shall provide notice to the Secretary of State of the prospective petition for an initiative measure.

(b) Under ORS 250.265, the city elections officer shall provide notice to the Secretary of State of the prospective petition for an initiative measure.

(2) Upon receipt of notice of a prospective petition for an initiative measure under subsection (1) of this section, the Secretary of State shall provide reasonable statewide notice of the prospective petition for an initiative measure.

1 **(3) Upon determining whether a prospective petition for an initi-**
2 **ative measure:**

3 **(a) Meets the requirements of Article IV, section 1 (2)(d), and Ar-**
4 **ticle VI, section 10, of the Oregon Constitution, the county clerk shall**
5 **provide notice to the Secretary of State of the clerk's determination.**

6 **(b) Meets the requirements of Article IV, section 1 (2)(d) and (5),**
7 **of the Oregon Constitution, the city elections officer shall provide**
8 **notice to the Secretary of State of the elections officer's determi-**
9 **nation.**

10 **(4) The Secretary of State shall provide reasonable statewide notice**
11 **of determinations made under subsection (3) of this section.**

12
13 **APPROPRIATION**
14

15 **SECTION 10. In addition to and not in lieu of any other appropri-**
16 **ation, there is appropriated to the Secretary of State, for the biennium**
17 **ending June 30, 2017, out of the General Fund, the amount of \$_____**
18 **for the purpose of implementing the provisions of section 9 of this 2016**
19 **Act.**

20
21 **CONFORMING AMENDMENTS**
22

23 **SECTION 11. ORS 147.421 is amended to read:**

24 147.421. (1) If a public body is the custodian of any of the following in-
25 formation, upon the request of the victim, the public body shall provide to
26 the victim any of the following information of which it is the custodian and
27 that is about the defendant or convicted criminal:

28 (a) The conviction and sentence;

29 (b) Criminal history;

30 (c) Imprisonment; and

31 (d) Future release from physical custody.

(2) A public body, in its discretion, may provide the requested information by furnishing the victim with copies of public records. The public body may charge the victim its actual cost for making public records available as provided in ORS 192.440 [(4)] (5).

(3) As used in this section:

(a) "Criminal history" means a description of the prior arrests, convictions and sentences of the person.

(b) "Future release" means the projected or scheduled date of release of the person from confinement, the name and location of the correctional facility from which the person is to be released and the community where the person is scheduled to reside upon release.

(c) "Imprisonment" means the name and location of the correctional facility in which the person is confined.

(d) "Public body" has the meaning given that term in ORS 192.410.

SECTION 12. ORS 802.183 is amended to read:

802.183. (1) The Department of Transportation may establish fees reasonably calculated to reimburse it for its actual cost in making personal information available to a person or government agency authorized under ORS 802.179 to obtain the information. Fees established under this subsection are subject to the provisions of ORS 192.440 [(4) to (6)] (5) to (7).

(2) The department may adopt rules specifying conditions that must be met by a person or government agency requesting personal information under ORS 802.179. Such conditions may include but need not be limited to:

(a) Providing reasonable assurance of the identity of the requester;

(b) Providing reasonable assurance of the uses to which the personal information will be put, if applicable;

(c) Showing that the individual whose personal information is to be disclosed has given permission for the disclosure, if permission is required; and

(d) Submitting a written request for the personal information in a form prescribed by the department.

CAPTIONS

SECTION 13. The unit captions used in this 2016 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2016 Act.

EMERGENCY CLAUSE

SECTION 14. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.
