

A-Engrossed
House Bill 2114

Ordered by the House May 2
Including House Amendments dated May 2

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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.

Creates Stewardship Agreement Grant Fund. Continuously appropriates moneys in fund to State Board of Forestry for grants to carry out stewardship agreements.

Permits Flexible Incentives Account to be used to fund activities related to stewardship agreements. [*Permits Watershed Improvement Grant Fund to be used to fund activities related to stewardship agreements.*] Permits State Department of Agriculture and State Board of Forestry to make binding determination as to applicability of rules to particular landowner. Directs State Department of Agriculture and State Board of Forestry to assist landowner in compliance with federal Endangered Species Act. Exempts operation conducted as part of stewardship agreement from requirement of written plan. Exempts land management plans of stewardship agreements from disclosure as public record **unless public interest requires disclosure.**

A BILL FOR AN ACT

1
2 Relating to stewardship agreements; creating new provisions; amending ORS 192.501, 527.670,
3 541.381 and 541.423; and appropriating money.

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

5
6 **STEWARDSHIP AGREEMENT GRANT FUND**

7
8 **SECTION 1. (1) The Stewardship Agreement Grant Fund is established separate and dis-**
9 **tinct from the General Fund. The Stewardship Agreement Grant Fund shall consist of all**
10 **moneys placed in the fund as provided by law. All moneys in the Stewardship Agreement**
11 **Grant Fund are continuously appropriated to the State Board of Forestry to provide grants**
12 **to carry out the purposes of stewardship agreements described in ORS 541.423. Interest ac-**
13 **cruing to the Stewardship Agreement Grant Fund shall be credited to the fund. Funds ap-**
14 **propriated and not expended by the completion of a biennium shall remain in the Stewardship**
15 **Agreement Grant Fund.**

16 **(2) The State Board of Forestry shall administer the Stewardship Agreement Grant Fund**
17 **and provide grants from the fund to landowners who have entered into stewardship agree-**
18 **ments for the purposes described in ORS 541.423.**

19 **(3) In addition to the funds made available for the purposes of ORS 541.423, the board also**
20 **may accept gifts and grants from any public or private source for the purpose of providing**
21 **the grants described in subsection (2) of this section.**

22 **SECTION 2. The State Board of Forestry may award funds from the Stewardship**
23 **Agreement Grant Fund only for the purposes described in section 1 of this 2007 Act. Any**

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 **projects that the board approves for funding must comply with the following criteria:**

2 (1) **There must be matching contribution from other program funds, in-kind services or**
3 **other investment in the project; and**

4 (2) **The project must provide a public benefit through improved water quality or improved**
5 **fish or wildlife habitat.**

6
7 **FLEXIBLE INCENTIVES ACCOUNT**

8
9 **SECTION 3.** ORS 541.381 is amended to read:

10 541.381. (1) There is created a Flexible Incentives Account in the State Treasury, separate and
11 distinct from the General Fund. Interest earned by the account shall be credited to the account. The
12 moneys in the account are continuously appropriated to the Oregon Watershed Enhancement Board
13 for the purposes specified in this section.

14 (2) The Oregon Watershed Enhancement Board shall use the **Flexible Incentives** Account to
15 assist landowners in the implementation of strategies intended to protect and restore native species
16 of fish, wildlife and plants and to maintain long-term ecological health, diversity and productivity in
17 a manner consistent with statewide, regional or local conservation plans. The board shall seek to
18 fund those strategies that offer the greatest public benefit at the lowest cost. **The account may**
19 **also be used to fund activities to achieve the purposes of stewardship agreements entered**
20 **into under ORS 541.423 between a landowner, or a representative of the landowner, and the**
21 **State Department of Agriculture or the State Board of Forestry.**

22 (3) The account shall consist of moneys appropriated to it by the Legislative Assembly and
23 moneys provided to the board by federal, state, regional or local governments for the purposes
24 specified in this section. The board may accept private moneys in the form of gifts, grants and be-
25 quests for deposit into the account.

26
27 **STEWARDSHIP AGREEMENTS**

28
29 **SECTION 4.** ORS 541.423 is amended to read:

30 541.423. (1) As used in this section, "stewardship agreement" means an agreement voluntarily
31 entered into and signed by a landowner, or representative of the landowner, and the State Depart-
32 ment of Agriculture or the State Board of Forestry that sets forth the terms under which the land-
33 owner will self-regulate to meet and exceed applicable regulatory requirements and achieve
34 conservation, restoration and improvement of fish and wildlife habitat or water quality.

35 (2) The State Department of Agriculture and the State Board of Forestry may, individually or
36 jointly, enter into stewardship agreements with landowners.

37 (3) The purposes of a stewardship agreement are to provide:

38 (a) An incentive for landowners to provide for conservation, restoration and improvement of fish
39 and wildlife habitat or water quality;

40 (b) A mechanism to coordinate, facilitate and memorialize a landowner's compliance with the
41 requirements of state and federal regulatory schemes; and

42 (c) A mechanism to combine or coordinate multiple incentive programs among agencies and
43 levels of government to:

44 (A) Improve the delivery of financial and technical assistance to landowners engaged in con-
45 servation activities;

- 1 (B) Reduce redundancy among programs;
- 2 (C) Simplify application procedures;
- 3 (D) Leverage the investment of federal funds;
- 4 (E) Make more efficient use of technical assistance funds;
- 5 (F) Provide greater incentives for landowners;
- 6 (G) Foster partnerships and improve cooperation with nongovernmental organizations;
- 7 (H) Provide greater environmental benefits;
- 8 (I) Tailor and more effectively target conservation programs administered by federal, state and
- 9 local governments to the unique conservation needs of, and opportunities presented by, individual
- 10 parcels of eligible land; and

11 (J) Give landowners an increased level of regulatory certainty.

12 (4) The State Board of Forestry and the State Department of Agriculture, in consultation with

13 the State Department of Fish and Wildlife, shall adopt by rule procedures and criteria for

14 stewardship agreements. The procedures and criteria shall include, but need not be limited to:

15 (a) The certification of a land management plan which shall, at a minimum, include:

16 (A) A comprehensive description and inventory of the subject property, its features and uses;

17 and

18 (B) A prescription for the protection of resources that exceeds land management practices,

19 standards and activities otherwise required by law and that is designed to achieve conservation,

20 restoration and improvement of fish and wildlife habitat or water quality.

21 (b) A requirement that each landowner subject to a stewardship agreement demonstrate a clear

22 capability to carry out the provisions of the land management plan and have a past record of good

23 compliance with applicable laws and regulations regarding land use and management.

24 (5) Each government agency that is a party to a stewardship agreement shall conduct periodic

25 audits on lands subject to the stewardship agreement to determine whether the land management

26 plan is being implemented and whether the agreement should be continued, revised or discontinued.

27 (6) Stewardship agreements may provide benefits to landowners that include, but are not limited

28 to:

29 (a) Expedited permit processing;

30 (b) Regulatory certainty;

31 (c) Priority consideration for cost-share assistance or other financial incentives and technical

32 assistance; and

33 (d) Government certification that certain land management practices have been implemented.

34 **(7) To give landowners an increased level of regulatory certainty, the State Department**

35 **of Agriculture and the State Board of Forestry may, individually or jointly, make a binding**

36 **determination as to the applicability of rules of the State Department of Agriculture and the**

37 **State Board of Forestry to a particular landowner, or a representative of the landowner, who**

38 **has entered into a stewardship agreement. The binding determination shall require the**

39 **landowner, or representative of the landowner, to abide by the local ordinances, state law**

40 **and rules of the State Department of Agriculture and the State Board of Forestry that are**

41 **in effect on the date the binding determination is executed. However, the State Department**

42 **of Agriculture or the State Board of Forestry may require compliance with later-adopted**

43 **ordinances, laws or rules upon a clear showing of a significant threat to the public health**

44 **or welfare, fish and wildlife habitat or water quality that requires application of such later-**

45 **adopted ordinances, laws or rules.**

1 **(8) The State Department of Agriculture and the State Board of Forestry may, individ-**
2 **ually or jointly, make a binding determination that activities undertaken by a particular**
3 **landowner, or a representative of the landowner, as part of a stewardship agreement are**
4 **consistent with the purposes and policies of any relevant Safe Harbor Agreements or Candi-**
5 **date Conservation Agreements entered into between the State of Oregon and agencies of the**
6 **United States Government, pursuant to the federal Endangered Species Act of 1973 (P.L.**
7 **93-205, 16 U.S.C. 1531 et seq.) and federal regulations.**

8
9 **FOREST PRACTICES ACT - WRITTEN PLAN REQUIREMENT**

10
11 **SECTION 5.** ORS 527.670 is amended to read:

12 527.670. (1) The State Board of Forestry shall designate the types of operations for which notice
13 shall be required under this section.

14 (2) The board shall determine by rule what types of operations require a written plan.

15 (3) The board's determination under subsection (2) of this section shall require a written plan
16 for operations:

17 (a) Within one hundred feet of a stream determined by the State Forester to be used by fish or
18 for domestic use, unless the board, by rule, provides that a written plan is not required because the
19 proposed operation will be conducted according to a general vegetation retention prescription de-
20 scribed in administrative rule, **or unless the operation will be conducted pursuant to a**
21 **stewardship agreement entered into under ORS 541.423; or**

22 (b) Within three hundred feet of a resource site inventoried pursuant to ORS 527.710 (3)(a) **un-**
23 **less the operation will be conducted pursuant to a stewardship agreement entered into under**
24 **ORS 541.423 and is consistent with the purposes and policies of any relevant Safe Harbor**
25 **Agreements or Candidate Conservation Agreements entered into between the State of**
26 **Oregon and agencies of the United States Government, pursuant to the federal Endangered**
27 **Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.) and federal regulations.**

28 (4) The distances set forth in subsection (3)(a) and (b) of this section are solely for the purpose
29 of defining an area within which a hearing may be requested under ORS 527.700 and not the area
30 to be protected by the board's rules adopted pursuant to ORS 527.710 (3)(c).

31 (5) For the purpose of determining the distances set forth in subsection (3)(a) and (b) of this
32 section "site" means the specific resource site and not any additional buffer area.

33 (6) An operator, timber owner or landowner, before commencing an operation, shall notify the
34 State Forester. The notification shall be on forms provided by the State Forester and shall include
35 the name and address of the operator, timber owner and landowner, the legal description of the
36 operating area, and any other information considered by the State Forester to be necessary for the
37 administration of the rules promulgated by the board pursuant to ORS 527.710. Promptly upon re-
38 ceipt of such notice, the State Forester shall send a copy of the notice to whichever of the operator,
39 timber owner or landowner did not submit the notification. The State Forester shall send a copy of
40 notices involving chemical applications to persons within 10 miles of the chemical application who
41 hold downstream surface water rights pursuant to ORS chapter 537, if such a person has requested
42 that notification in writing. The board shall adopt rules specifying the information to be contained
43 in the notice. All information filed with the State Forester pertaining to chemical applications shall
44 be public record.

45 (7) An operator, timber owner or landowner, whichever filed the original notification, shall no-

1 tify the State Forester of any subsequent change in the information contained in the notification.

2 (8) Within three working days of receipt of a notice or a written plan filed under subsection (6)
3 or (7) of this section, the State Forester shall send a copy of the notice or written plan to any person
4 who requested of the State Forester in writing that the person be sent copies of notice and written
5 plan and who has paid any applicable fee established by the State Forester for such service. The
6 State Forester may establish a fee for sending copies of notices and written plans under this sub-
7 section not to exceed the actual and reasonable costs. In addition, the State Forester shall send a
8 copy of the notification to the Department of Revenue and the county assessor for the county in
9 which the operation is located, at times and in a manner determined through written cooperative
10 agreement by the parties involved.

11 (9) Persons may submit written comments pertaining to the operation to the State Forester
12 within 14 calendar days of the date the notice or written plan was filed with the State Forester
13 under subsection (2), (6) or (7) of this section. Notwithstanding the provisions of this subsection, the
14 State Forester may waive any waiting period for operations not requiring a written plan under
15 subsection (3) of this section, except those operations involving aerial application of chemicals.

16 (10) If an operator, timber owner or landowner is required to submit a written plan of operations
17 to the State Forester under subsection (3) of this section:

18 (a) The State Forester shall review a written plan and may provide comments to the person who
19 submitted the written plan;

20 (b) The State Forester may not provide any comments concerning the written plan earlier than
21 14 calendar days following the date that the written plan was filed with the State Forester nor later
22 than 21 calendar days following the date that the written plan was filed; and

23 (c) Provided that notice has been provided as required by subsection (6) of this section, the op-
24 eration may commence on the date that the State Forester provides comments or, if no comments
25 are provided within the time period established in paragraph (b) of this subsection, at any time after
26 21 calendar days following the date that the written plan was filed.

27 (11)(a) Comments provided by the State Forester, or by the board under ORS 527.700 (6), to the
28 person who submitted the written plan are for the sole purpose of providing advice to the operator,
29 timber owner or landowner regarding whether the operation described in the written plan is likely
30 to comply with ORS 527.610 to 527.770 and rules adopted thereunder. Comments provided by the
31 State Forester or the board do not constitute an approval of the written plan or operation.

32 (b) If the State Forester or the board does not comment on a written plan, the failure to com-
33 ment does not mean that an operation carried out in conformance with the written plan complies
34 with ORS 527.610 to 527.770 or rules adopted thereunder nor does the failure to comment constitute
35 a rejection of the written plan or operation.

36 (c) In the event that the State Forester or board determines that an enforcement action may be
37 appropriate concerning the compliance of a particular operation with ORS 527.610 to 527.770 or
38 rules adopted thereunder, the State Forester or board shall consider, but are not bound by, com-
39 ments that the State Forester provided under this section or comments that the board provided un-
40 der ORS 527.700.

41 (12) When the operation is required to have a written plan under subsection (3) of this section
42 and comments have been timely filed under subsection (9) of this section pertaining to the operation
43 requiring a written plan, the State Forester shall:

44 (a) Send a copy of the State Forester's review and comments, if any, to persons who submitted
45 timely written comments under subsection (9) of this section pertaining to the operation; and

1 (b) Send to the operator, timber owner and landowner a copy of all timely comments submitted
2 under subsection (9) of this section.

3
4 **PUBLIC RECORDS EXEMPTION**

5
6 **SECTION 6.** ORS 192.501 is amended to read:

7 192.501. The following public records are exempt from disclosure under ORS 192.410 to 192.505
8 unless the public interest requires disclosure in the particular instance:

9 (1) Records of a public body pertaining to litigation to which the public body is a party if the
10 complaint has been filed, or if the complaint has not been filed, if the public body shows that such
11 litigation is reasonably likely to occur. This exemption does not apply to litigation which has been
12 concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery
13 or deposition statutes to a party to litigation or potential litigation;

14 (2) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to,
15 any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or
16 compilation of information which is not patented, which is known only to certain individuals within
17 an organization and which is used in a business it conducts, having actual or potential commercial
18 value, and which gives its user an opportunity to obtain a business advantage over competitors who
19 do not know or use it;

20 (3) Investigatory information compiled for criminal law purposes. The record of an arrest or the
21 report of a crime shall be disclosed unless and only for so long as there is a clear need to delay
22 disclosure in the course of a specific investigation, including the need to protect the complaining
23 party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or
24 granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the
25 record of an arrest or the report of a crime includes, but is not limited to:

26 (a) The arrested person's name, age, residence, employment, marital status and similar bi-
27 ographical information;

28 (b) The offense with which the arrested person is charged;

29 (c) The conditions of release pursuant to ORS 135.230 to 135.290;

30 (d) The identity of and biographical information concerning both complaining party and victim;

31 (e) The identity of the investigating and arresting agency and the length of the investigation;

32 (f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

33 (g) Such information as may be necessary to enlist public assistance in apprehending fugitives
34 from justice;

35 (4) Test questions, scoring keys, and other data used to administer a licensing examination,
36 employment, academic or other examination or testing procedure before the examination is given
37 and if the examination is to be used again. Records establishing procedures for and instructing
38 persons administering, grading or evaluating an examination or testing procedure are included in
39 this exemption, to the extent that disclosure would create a risk that the result might be affected;

40 (5) Information consisting of production records, sale or purchase records or catch records, or
41 similar business records of a private concern or enterprise, required by law to be submitted to or
42 inspected by a governmental body to allow it to determine fees or assessments payable or to estab-
43 lish production quotas, and the amounts of such fees or assessments payable or paid, to the extent
44 that such information is in a form which would permit identification of the individual concern or
45 enterprise. This exemption does not include records submitted by long term care facilities as defined

1 in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for pa-
2 tient care. Nothing in this subsection shall limit the use which can be made of such information for
3 regulatory purposes or its admissibility in any enforcement proceeding;

4 (6) Information relating to the appraisal of real estate prior to its acquisition;

5 (7) The names and signatures of employees who sign authorization cards or petitions for the
6 purpose of requesting representation or decertification elections;

7 (8) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825,
8 until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under
9 ORS 659A.850;

10 (9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and
11 663.180;

12 (10) Records, reports and other information received or compiled by the Director of the De-
13 partment of Consumer and Business Services under ORS 697.732;

14 (11) Information concerning the location of archaeological sites or objects as those terms are
15 defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and
16 the need for the information is related to that Indian tribe's cultural or religious activities. This
17 exemption does not include information relating to a site that is all or part of an existing, commonly
18 known and publicized tourist facility or attraction;

19 (12) A personnel discipline action, or materials or documents supporting that action;

20 (13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and
21 564.100, regarding the habitat, location or population of any threatened species or endangered spe-
22 cies;

23 (14) Writings prepared by or under the direction of faculty of public educational institutions, in
24 connection with research, until publicly released, copyrighted or patented;

25 (15) Computer programs developed or purchased by or for any public body for its own use. As
26 used in this subsection, "computer program" means a series of instructions or statements which
27 permit the functioning of a computer system in a manner designed to provide storage, retrieval and
28 manipulation of data from such computer system, and any associated documentation and source
29 material that explain how to operate the computer program. "Computer program" does not include:

30 (a) The original data, including but not limited to numbers, text, voice, graphics and images;

31 (b) Analyses, compilations and other manipulated forms of the original data produced by use of
32 the program; or

33 (c) The mathematical and statistical formulas which would be used if the manipulated forms of
34 the original data were to be produced manually;

35 (16) Data and information provided by participants to mediation under ORS 36.256;

36 (17) Investigatory information relating to any complaint or charge filed under ORS chapter 654,
37 until a final administrative determination is made or, if a citation is issued, until an employer re-
38 ceives notice of any citation;

39 (18) Specific operational plans in connection with an anticipated threat to individual or public
40 safety for deployment and use of personnel and equipment, prepared or used by a public body, if
41 public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a
42 law enforcement activity;

43 (19)(a) Audits or audit reports required of a telecommunications carrier. As used in this para-
44 graph, "audit or audit report" means any external or internal audit or audit report pertaining to a
45 telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having an af-

1 filiated interest, as defined in ORS 759.390, with a telecommunications carrier that is intended to
2 make the operations of the entity more efficient, accurate or compliant with applicable rules, pro-
3 cedures or standards, that may include self-criticism and that has been filed by the telecommuni-
4 cations carrier or affiliate under compulsion of state law. "Audit or audit report" does not mean an
5 audit of a cost study that would be discoverable in a contested case proceeding and that is not
6 subject to a protective order; and

7 (b) Financial statements. As used in this paragraph, "financial statement" means a financial
8 statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.390,
9 with a telecommunications carrier, as defined in ORS 133.721;

10 (20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS
11 247.967;

12 (21) The following records, communications and information submitted to a housing authority
13 as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by applicants
14 for and recipients of loans, grants and tax credits:

15 (a) Personal and corporate financial statements and information, including tax returns;

16 (b) Credit reports;

17 (c) Project appraisals;

18 (d) Market studies and analyses;

19 (e) Articles of incorporation, partnership agreements and operating agreements;

20 (f) Commitment letters;

21 (g) Project pro forma statements;

22 (h) Project cost certifications and cost data;

23 (i) Audits;

24 (j) Project tenant correspondence requested to be confidential;

25 (k) Tenant files relating to certification; and

26 (L) Housing assistance payment requests;

27 (22) Records or information that, if disclosed, would allow a person to:

28 (a) Gain unauthorized access to buildings or other property;

29 (b) Identify those areas of structural or operational vulnerability that would permit unlawful
30 disruption to, or interference with, services; or

31 (c) Disrupt, interfere with or gain unauthorized access to public funds or to information pro-
32 cessing, communication or telecommunication systems, including the information contained in the
33 systems, that are used or operated by a public body;

34 (23) Records or information that would reveal or otherwise identify security measures, or
35 weaknesses or potential weaknesses in security measures, taken or recommended to be taken to
36 protect:

37 (a) An individual;

38 (b) Buildings or other property;

39 (c) Information processing, communication or telecommunication systems, including the infor-
40 mation contained in the systems; or

41 (d) Those operations of the Oregon State Lottery the security of which are subject to study and
42 evaluation under ORS 461.180 (6);

43 (24) Personal information held by or under the direction of officials of the Oregon Health and
44 Science University or the Oregon University System about a person who has or who is interested
45 in donating money or property to the university, the system or a state institution of higher educa-

1 tion, if the information is related to the family of the person, personal assets of the person or is
2 incidental information not related to the donation;

3 (25) The home address, professional address and telephone number of a person who has or who
4 is interested in donating money or property to the Oregon University System;

5 (26) Records of the name and address of a person who files a report with or pays an assessment
6 to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council
7 created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030;

8 (27) Information provided to, obtained by or used by a public body to authorize, originate, re-
9 ceive or authenticate a transfer of funds, including but not limited to a credit card number, payment
10 card expiration date, password, financial institution account number and financial institution routing
11 number;

12 (28) Social Security numbers as provided in ORS 107.840;

13 (29) The electronic mail address of a student who attends a state institution of higher education
14 listed in ORS 352.002 or Oregon Health and Science University; and

15 (30) The name, home address, professional address or location of a person that is engaged in,
16 or that provides goods or services for, medical research at Oregon Health and Science University
17 that is conducted using animals other than rodents. This subsection does not apply to Oregon Health
18 and Science University press releases, websites or other publications circulated to the general pub-
19 lic.

20 **(31) Land management plans required for voluntary stewardship agreements entered into**
21 **under ORS 541.423.**

22 **SECTION 7.** ORS 192.501, as amended by section 3, chapter 455, Oregon Laws 2005, is amended
23 to read:

24 192.501. The following public records are exempt from disclosure under ORS 192.410 to 192.505
25 unless the public interest requires disclosure in the particular instance:

26 (1) Records of a public body pertaining to litigation to which the public body is a party if the
27 complaint has been filed, or if the complaint has not been filed, if the public body shows that such
28 litigation is reasonably likely to occur. This exemption does not apply to litigation which has been
29 concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery
30 or deposition statutes to a party to litigation or potential litigation;

31 (2) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to,
32 any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or
33 compilation of information which is not patented, which is known only to certain individuals within
34 an organization and which is used in a business it conducts, having actual or potential commercial
35 value, and which gives its user an opportunity to obtain a business advantage over competitors who
36 do not know or use it;

37 (3) Investigatory information compiled for criminal law purposes. The record of an arrest or the
38 report of a crime shall be disclosed unless and only for so long as there is a clear need to delay
39 disclosure in the course of a specific investigation, including the need to protect the complaining
40 party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or
41 granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the
42 record of an arrest or the report of a crime includes, but is not limited to:

43 (a) The arrested person's name, age, residence, employment, marital status and similar bi-
44 ographical information;

45 (b) The offense with which the arrested person is charged;

- 1 (c) The conditions of release pursuant to ORS 135.230 to 135.290;
- 2 (d) The identity of and biographical information concerning both complaining party and victim;
- 3 (e) The identity of the investigating and arresting agency and the length of the investigation;
- 4 (f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and
- 5 (g) Such information as may be necessary to enlist public assistance in apprehending fugitives
- 6 from justice;
- 7 (4) Test questions, scoring keys, and other data used to administer a licensing examination,
- 8 employment, academic or other examination or testing procedure before the examination is given
- 9 and if the examination is to be used again. Records establishing procedures for and instructing
- 10 persons administering, grading or evaluating an examination or testing procedure are included in
- 11 this exemption, to the extent that disclosure would create a risk that the result might be affected;
- 12 (5) Information consisting of production records, sale or purchase records or catch records, or
- 13 similar business records of a private concern or enterprise, required by law to be submitted to or
- 14 inspected by a governmental body to allow it to determine fees or assessments payable or to estab-
- 15 lish production quotas, and the amounts of such fees or assessments payable or paid, to the extent
- 16 that such information is in a form which would permit identification of the individual concern or
- 17 enterprise. This exemption does not include records submitted by long term care facilities as defined
- 18 in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for pa-
- 19 tient care. Nothing in this subsection shall limit the use which can be made of such information for
- 20 regulatory purposes or its admissibility in any enforcement proceeding;
- 21 (6) Information relating to the appraisal of real estate prior to its acquisition;
- 22 (7) The names and signatures of employees who sign authorization cards or petitions for the
- 23 purpose of requesting representation or decertification elections;
- 24 (8) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825,
- 25 until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under
- 26 ORS 659A.850;
- 27 (9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and
- 28 663.180;
- 29 (10) Records, reports and other information received or compiled by the Director of the De-
- 30 partment of Consumer and Business Services under ORS 697.732;
- 31 (11) Information concerning the location of archaeological sites or objects as those terms are
- 32 defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and
- 33 the need for the information is related to that Indian tribe's cultural or religious activities. This
- 34 exemption does not include information relating to a site that is all or part of an existing, commonly
- 35 known and publicized tourist facility or attraction;
- 36 (12) A personnel discipline action, or materials or documents supporting that action;
- 37 (13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and
- 38 564.100, regarding the habitat, location or population of any threatened species or endangered spe-
- 39 cies;
- 40 (14) Writings prepared by or under the direction of faculty of public educational institutions, in
- 41 connection with research, until publicly released, copyrighted or patented;
- 42 (15) Computer programs developed or purchased by or for any public body for its own use. As
- 43 used in this subsection, "computer program" means a series of instructions or statements which
- 44 permit the functioning of a computer system in a manner designed to provide storage, retrieval and
- 45 manipulation of data from such computer system, and any associated documentation and source

1 material that explain how to operate the computer program. "Computer program" does not include:

2 (a) The original data, including but not limited to numbers, text, voice, graphics and images;

3 (b) Analyses, compilations and other manipulated forms of the original data produced by use of
4 the program; or

5 (c) The mathematical and statistical formulas which would be used if the manipulated forms of
6 the original data were to be produced manually;

7 (16) Data and information provided by participants to mediation under ORS 36.256;

8 (17) Investigatory information relating to any complaint or charge filed under ORS chapter 654,
9 until a final administrative determination is made or, if a citation is issued, until an employer re-
10 ceives notice of any citation;

11 (18) Specific operational plans in connection with an anticipated threat to individual or public
12 safety for deployment and use of personnel and equipment, prepared or used by a public body, if
13 public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a
14 law enforcement activity;

15 (19)(a) Audits or audit reports required of a telecommunications carrier. As used in this para-
16 graph, "audit or audit report" means any external or internal audit or audit report pertaining to a
17 telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having an af-
18 filiated interest, as defined in ORS 759.390, with a telecommunications carrier that is intended to
19 make the operations of the entity more efficient, accurate or compliant with applicable rules, pro-
20 cedures or standards, that may include self-criticism and that has been filed by the telecommuni-
21 cations carrier or affiliate under compulsion of state law. "Audit or audit report" does not mean an
22 audit of a cost study that would be discoverable in a contested case proceeding and that is not
23 subject to a protective order; and

24 (b) Financial statements. As used in this paragraph, "financial statement" means a financial
25 statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.390,
26 with a telecommunications carrier, as defined in ORS 133.721;

27 (20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS
28 247.967;

29 (21) The following records, communications and information submitted to a housing authority
30 as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by applicants
31 for and recipients of loans, grants and tax credits:

32 (a) Personal and corporate financial statements and information, including tax returns;

33 (b) Credit reports;

34 (c) Project appraisals;

35 (d) Market studies and analyses;

36 (e) Articles of incorporation, partnership agreements and operating agreements;

37 (f) Commitment letters;

38 (g) Project pro forma statements;

39 (h) Project cost certifications and cost data;

40 (i) Audits;

41 (j) Project tenant correspondence requested to be confidential;

42 (k) Tenant files relating to certification; and

43 (L) Housing assistance payment requests;

44 (22) Records or information that, if disclosed, would allow a person to:

45 (a) Gain unauthorized access to buildings or other property;

1 (b) Identify those areas of structural or operational vulnerability that would permit unlawful
2 disruption to, or interference with, services; or

3 (c) Disrupt, interfere with or gain unauthorized access to public funds or to information pro-
4 cessing, communication or telecommunication systems, including the information contained in the
5 systems, that are used or operated by a public body;

6 (23) Records or information that would reveal or otherwise identify security measures, or
7 weaknesses or potential weaknesses in security measures, taken or recommended to be taken to
8 protect:

9 (a) An individual;

10 (b) Buildings or other property;

11 (c) Information processing, communication or telecommunication systems, including the infor-
12 mation contained in the systems; or

13 (d) Those operations of the Oregon State Lottery the security of which are subject to study and
14 evaluation under ORS 461.180 (6);

15 (24) Personal information held by or under the direction of officials of the Oregon Health and
16 Science University or the Oregon University System about a person who has or who is interested
17 in donating money or property to the university, the system or a state institution of higher educa-
18 tion, if the information is related to the family of the person, personal assets of the person or is
19 incidental information not related to the donation;

20 (25) The home address, professional address and telephone number of a person who has or who
21 is interested in donating money or property to the Oregon University System;

22 (26) Records of the name and address of a person who files a report with or pays an assessment
23 to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council
24 created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030;

25 (27) Information provided to, obtained by or used by a public body to authorize, originate, re-
26 ceive or authenticate a transfer of funds, including but not limited to a credit card number, payment
27 card expiration date, password, financial institution account number and financial institution routing
28 number;

29 (28) Social Security numbers as provided in ORS 107.840; and

30 (29) The electronic mail address of a student who attends a state institution of higher education
31 listed in ORS 352.002 or Oregon Health and Science University.

32 **(30) Land management plans required for voluntary stewardship agreements entered into**
33 **under ORS 541.423.**

34
35 **MISCELLANEOUS**

36
37 **SECTION 8. The unit captions used in this 2007 Act are provided only for the convenience**
38 **of the reader and do not become part of the statutory law of this state or express any leg-**
39 **islative intent in the enactment of this 2007 Act.**