

House Bill 3544

Sponsored by Representative G SMITH, Senator NELSON (at the request of Colleen MacLeod)

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 **as introduced**.

Allows public body to refuse to disclose public record if custodian of record determines that request for disclosure is excessive, redundant, intended to disrupt essential functions of public body or made in bad faith or for purpose of harassment.

Allows person denied right to inspect records to petition Oregon Government Standards and Practices Commission for determination of whether records should be disclosed. Allows appeal to circuit court of county where records are located.

A BILL FOR AN ACT

1
2 Relating to public records; creating new provisions; and amending ORS 192.490.

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

4 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS 192.501 to**
5 **192.505.**

6 **SECTION 2. (1) The custodian of a public record may refuse to provide a copy of a public**
7 **record or an opportunity to inspect or copy a public record if the custodian determines that**
8 **the request to receive a copy of or inspect the public record:**

9 (a) **Is excessive or redundant;**

10 (b) **Is intended to disrupt other essential functions of the public body; or**

11 (c) **Is made in bad faith or for purposes of harassment.**

12 (2) **Notwithstanding ORS 192.450, 192.460 and 192.480, any person denied the right to in-**
13 **spect or to receive a copy of any public record under subsection (1) of this section may pe-**
14 **tition the Oregon Government Standards and Practices Commission to determine whether**
15 **the public record may be withheld from inspection under subsection (1) of this section. The**
16 **burden is on the public body to sustain its action. Within 14 business days after the com-**
17 **mission receives the petition, the commission shall review the public record and the cir-**
18 **cumstances of the request for inspection and issue an order denying or granting the petition,**
19 **or denying it in part and granting it in part.**

20 (3) **If the commission grants or denies a petition under subsection (2) of this section, the**
21 **public body or a person denied the right to inspect or receive a copy of the record may in-**
22 **stitute proceedings for injunctive or declaratory relief in the circuit court for the county**
23 **where the public record is held.**

24 **SECTION 3. ORS 192.490 is amended to read:**

25 192.490. (1) In any suit filed under ORS 192.450, 192.460, 192.470 or 192.480 **or section 2 of this**
26 **2007 Act**, the court has jurisdiction to enjoin the public body from withholding records and to order
27 the production of any records improperly withheld from the person seeking disclosure. The court
28 shall determine the matter de novo and the burden is on the public body to sustain its action. The
29 court, on its own motion, may view the documents in controversy in camera before reaching a de-

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 cision. Any noncompliance with the order of the court may be punished as contempt of court.

2 (2) Except as to causes the court considers of greater importance, proceedings arising under
3 ORS 192.450, 192.460, 192.470 or 192.480 **or section 2 of this 2007 Act** take precedence on the
4 docket over all other causes and shall be assigned for hearing and trial at the earliest practicable
5 date and expedited in every way.

6 (3) If a person seeking the right to inspect or to receive a copy of a public record prevails in
7 the suit, the person shall be awarded costs and disbursements and reasonable attorney fees at trial
8 and on appeal. If the person prevails in part, the court may in its discretion award the person costs
9 and disbursements and reasonable attorney fees at trial and on appeal, or an appropriate portion
10 thereof. If the state agency failed to comply with the Attorney General's order in full and did not
11 issue a notice of intention to institute proceedings pursuant to ORS 192.450 (2) within seven days
12 after issuance of the order, or did not institute the proceedings within seven days after issuance of
13 the notice, the petitioner shall be awarded costs of suit at the trial level and reasonable attorney
14 fees regardless of which party instituted the suit and regardless of which party prevailed therein.

15 **(4) If a public body prevails in whole or in part in a suit brought under section 2 of this**
16 **2007 Act, the public body may be awarded costs and disbursements and reasonable attorney**
17 **fees at trial and on appeal.**

18 **SECTION 4. Section 2 of this 2007 Act and the amendments to ORS 192.490 by section 3**
19 **of this 2007 Act apply to requests to inspect or to receive a copy of any public record made**
20 **on or after the effective date of this 2007 Act.**

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