

# Senate Bill 64

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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 **as introduced**.

Makes records of certain investments of State Treasurer, Oregon Growth Account Board and Oregon Investment Council exempt from disclosure under public records law.

## A BILL FOR AN ACT

1  
2 Relating to exemption of investment records from disclosure; creating new provisions; and amending  
3 ORS 181.854, 192.502, 285C.145, 456.623 and 656.702.

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

5 **SECTION 1.** ORS 192.502 is amended to read:

6 192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

7 (1) Communications within a public body or between public bodies of an advisory nature to the  
8 extent that they cover other than purely factual materials and are preliminary to any final agency  
9 determination of policy or action. This exemption shall not apply unless the public body shows that  
10 in the particular instance the public interest in encouraging frank communication between officials  
11 and employees of public bodies clearly outweighs the public interest in disclosure.

12 (2) Information of a personal nature such as but not limited to that kept in a personal, medical  
13 or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the  
14 public interest by clear and convincing evidence requires disclosure in the particular instance. The  
15 party seeking disclosure shall have the burden of showing that public disclosure would not consti-  
16 tute an unreasonable invasion of privacy.

17 (3) Public body employee or volunteer addresses, Social Security numbers, dates of birth and  
18 telephone numbers contained in personnel records maintained by the public body that is the em-  
19 ployer or the recipient of volunteer services. This exemption:

20 (a) Does not apply to the addresses, dates of birth and telephone numbers of employees or vol-  
21 unteers who are elected officials, except that a judge or district attorney subject to election may  
22 seek to exempt the judge's or district attorney's address or telephone number, or both, under the  
23 terms of ORS 192.445;

24 (b) Does not apply to employees or volunteers to the extent that the party seeking disclosure  
25 shows by clear and convincing evidence that the public interest requires disclosure in a particular  
26 instance;

27 (c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a pro-  
28 fessional education association of which the substitute teacher may be a member; and

29 (d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

30 (4) Information submitted to a public body in confidence and not otherwise required by law to

**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 be submitted, where such information should reasonably be considered confidential, the public body  
 2 has obliged itself in good faith not to disclose the information, and when the public interest would  
 3 suffer by the disclosure.

4 (5) Information or records of the Department of Corrections, including the State Board of Parole  
 5 and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of  
 6 a person in custody of the department or substantially prejudice or prevent the carrying out of the  
 7 functions of the department, if the public interest in confidentiality clearly outweighs the public in-  
 8 terest in disclosure.

9 (6) Records, reports and other information received or compiled by the Director of the Depart-  
 10 ment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not  
 11 otherwise required by law to be made public, to the extent that the interests of lending institutions,  
 12 their officers, employees and customers in preserving the confidentiality of such information out-  
 13 weighs the public interest in disclosure.

14 (7) Reports made to or filed with the court under ORS 137.077 or 137.530.

15 (8) Any public records or information the disclosure of which is prohibited by federal law or  
 16 regulations.

17 (9) Public records or information the disclosure of which is prohibited or restricted or otherwise  
 18 made confidential or privileged under Oregon law.

19 (10) Public records or information described in this section, furnished by the public body ori-  
 20 ginally compiling, preparing or receiving them to any other public officer or public body in con-  
 21 nection with performance of the duties of the recipient, if the considerations originally giving rise  
 22 to the confidential or exempt nature of the public records or information remain applicable.

23 (11) Records of the Energy Facility Siting Council concerning the review or approval of security  
 24 programs pursuant to ORS 469.530.

25 (12) Employee and retiree address, telephone number and other nonfinancial membership records  
 26 and employee financial records maintained by the Public Employees Retirement System pursuant to  
 27 ORS chapters 238 and 238A.

28 (13) Records **of or** submitted [*by private persons or businesses*] to the State Treasurer, [*or*] the  
 29 Oregon Investment Council **or the agents of the treasurer or the council** relating to **active or**  
 30 proposed [*acquisition, exchange or liquidation of public*] **publicly traded** investments under ORS  
 31 chapter 293 [*may be treated as exempt from disclosure when and only to the extent that disclosure of*  
 32 *such records reasonably may be expected to substantially limit the ability of the Oregon Investment*  
 33 *Council to effectively compete or negotiate for, solicit or conclude such transactions. Records which*  
 34 *relate to concluded transactions are not subject to this exemption.*], **including but not limited to re-**  
 35 **records regarding the acquisition, exchange or liquidation of the investments. For the purposes**  
 36 **of this subsection:**

37 (a) **The exemption does not apply to:**

38 (A) **Information in investment records solely related to the amount paid directly into an**  
 39 **investment by, or returned from the investment directly to, the treasurer or council; or**

40 (B) **The identity of the entity to which the amount was paid directly or from which the**  
 41 **amount was received directly.**

42 (b) **An investment in a publicly traded investment is no longer active when acquisition,**  
 43 **exchange or liquidation of the investment has been concluded.**

44 (14)(a) **Records of or submitted to the State Treasurer, the Oregon Investment Council,**  
 45 **the Oregon Growth Account Board or the agents of the treasurer, council or board relating**

1 to actual or proposed investments under ORS chapter 293 or 348 in a privately placed in-  
 2 vestment fund or a private asset including but not limited to records regarding the solicita-  
 3 tion, acquisition, deployment, exchange or liquidation of the investments including but not  
 4 limited to:

5 (A) Due diligence materials that are proprietary to an investment fund, to an asset  
 6 ownership or to their respective investment vehicles.

7 (B) Financial statements of an investment fund, an asset ownership or their respective  
 8 investment vehicles.

9 (C) Meeting materials of an investment fund, an asset ownership or their respective in-  
 10 vestment vehicles.

11 (D) Records containing information regarding the portfolio positions in which an invest-  
 12 ment fund, an asset ownership or their respective investment vehicles invest.

13 (E) Capital call and distribution notices of an investment fund, an asset ownership or  
 14 their respective investment vehicles.

15 (F) Investment agreements and related documents.

16 (b) The exemption under this subsection does not apply to:

17 (A) The name, address and vintage year of each privately placed investment fund.

18 (B) The dollar amount of the commitment made to each privately placed investment fund  
 19 since inception of the fund.

20 (C) The dollar amount of cash contributions made to each privately placed investment  
 21 fund since inception of the fund.

22 (D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the  
 23 State Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the  
 24 agents of the treasurer, council or board from each privately placed investment fund.

25 (E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a  
 26 privately placed investment fund attributable to an investment by the State Treasurer, the  
 27 Oregon Investment Council, the Oregon Growth Account Board or the agents of the treas-  
 28 urer, council or board.

29 (F) The net internal rate of return of each privately placed investment fund since incep-  
 30 tion of the fund.

31 (G) The investment multiple of each privately placed investment fund since inception of  
 32 the fund.

33 (H) The dollar amount of the total management fees and costs paid on an annual fiscal  
 34 year-end basis to each privately placed investment fund.

35 (I) The dollar amount of cash profit received from each privately placed investment fund  
 36 on a fiscal year-end basis.

37 [(14)] (15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 con-  
 38 cerning the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly  
 39 treated as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

40 [(15)] (16) Reports of unclaimed property filed by the holders of such property to the extent  
 41 permitted by ORS 98.352.

42 [(16)] (17) The following records, communications and information submitted to the Oregon  
 43 Economic and Community Development Commission, the Economic and Community Development  
 44 Department, the State Department of Agriculture, the Oregon Growth Account Board, the Port of  
 45 Portland or other ports, as defined in ORS 777.005, by applicants for investment funds, loans or

1 services including, but not limited to, those described in ORS 285A.224:

2 (a) Personal financial statements.

3 (b) Financial statements of applicants.

4 (c) Customer lists.

5 (d) Information of an applicant pertaining to litigation to which the applicant is a party if the  
6 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such  
7 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been  
8 concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery  
9 or deposition statutes to a party to litigation or potential litigation.

10 (e) Production, sales and cost data.

11 (f) Marketing strategy information that relates to applicant's plan to address specific markets  
12 and applicant's strategy regarding specific competitors.

13 [(17)] (18) Records, reports or returns submitted by private concerns or enterprises required by  
14 law to be submitted to or inspected by a governmental body to allow it to determine the amount of  
15 any transient lodging tax payable and the amounts of such tax payable or paid, to the extent that  
16 such information is in a form which would permit identification of the individual concern or enter-  
17 prise. Nothing in this subsection shall limit the use which can be made of such information for  
18 regulatory purposes or its admissibility in any enforcement proceedings. The public body shall notify  
19 the taxpayer of the delinquency immediately by certified mail. However, in the event that the pay-  
20 ment or delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60  
21 days, the public body shall disclose, upon the request of any person, the following information:

22 (a) The identity of the individual concern or enterprise that is delinquent over 60 days in the  
23 payment or delivery of the taxes.

24 (b) The period for which the taxes are delinquent.

25 (c) The actual, or estimated, amount of the delinquency.

26 [(18)] (19) All information supplied by a person under ORS 151.485 for the purpose of requesting  
27 appointed counsel, and all information supplied to the court from whatever source for the purpose  
28 of verifying the financial eligibility of a person pursuant to ORS 151.485.

29 [(19)] (20) Workers' compensation claim records of the Department of Consumer and Business  
30 Services, except in accordance with rules adopted by the Director of the Department of Consumer  
31 and Business Services, in any of the following circumstances:

32 (a) When necessary for insurers, self-insured employers and third party claim administrators to  
33 process workers' compensation claims.

34 (b) When necessary for the director, other governmental agencies of this state or the United  
35 States to carry out their duties, functions or powers.

36 (c) When the disclosure is made in such a manner that the disclosed information cannot be used  
37 to identify any worker who is the subject of a claim.

38 (d) When a worker or the worker's representative requests review of the worker's claim record.

39 [(20)] (21) Sensitive business records or financial or commercial information of the Oregon  
40 Health and Science University that is not customarily provided to business competitors.

41 [(21)] (22) Records of Oregon Health and Science University regarding candidates for the posi-  
42 tion of president of the university.

43 [(22)] (23) The records of a library, including circulation records, showing use of specific library  
44 material by a named person or consisting of the name of a library patron together with the address  
45 or telephone number, or both, of the patron.

1        [(23)] **(24)** The following records, communications and information obtained by the Housing and  
 2 Community Services Department in connection with the department’s monitoring or administration  
 3 of financial assistance or of housing or other developments:

- 4        (a) Personal and corporate financial statements and information, including tax returns.
- 5        (b) Credit reports.
- 6        (c) Project appraisals.
- 7        (d) Market studies and analyses.
- 8        (e) Articles of incorporation, partnership agreements and operating agreements.
- 9        (f) Commitment letters.
- 10       (g) Project pro forma statements.
- 11       (h) Project cost certifications and cost data.
- 12       (i) Audits.
- 13       (j) Project tenant correspondence.
- 14       (k) Personal information about a tenant.
- 15       (L) Housing assistance payments.

16       [(24)] **(25)** Raster geographic information system (GIS) digital databases, provided by private  
 17 forestland owners or their representatives, voluntarily and in confidence to the State Forestry De-  
 18 partment, that is not otherwise required by law to be submitted.

19       [(25)] **(26)** Sensitive business, commercial or financial information furnished to or developed by  
 20 a public body engaged in the business of providing electricity or electricity services, if the infor-  
 21 mation is directly related to a transaction described in ORS 261.348, or if the information is directly  
 22 related to a bid, proposal or negotiations for the sale or purchase of electricity or electricity ser-  
 23 vices, and disclosure of the information would cause a competitive disadvantage for the public body  
 24 or its retail electricity customers. This subsection does not apply to cost-of-service studies used in  
 25 the development or review of generally applicable rate schedules.

26       [(26)] **(27)** Sensitive business, commercial or financial information furnished to or developed by  
 27 the City of Klamath Falls, acting solely in connection with the ownership and operation of the  
 28 Klamath Cogeneration Project, if the information is directly related to a transaction described in  
 29 ORS 225.085 and disclosure of the information would cause a competitive disadvantage for the  
 30 Klamath Cogeneration Project. This subsection does not apply to cost-of-service studies used in the  
 31 development or review of generally applicable rate schedules.

32       [(27)] **(28)** Personally identifiable information about customers of a municipal electric utility or  
 33 a people’s utility district or the names, dates of birth, driver license numbers, telephone numbers,  
 34 electronic mail addresses or Social Security numbers of customers who receive water, sewer or  
 35 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-  
 36 lease personally identifiable information about a customer, and a public body providing water, sewer  
 37 or storm drain services may release the name, date of birth, driver license number, telephone num-  
 38 ber, electronic mail address or Social Security number of a customer, if the customer consents in  
 39 writing or electronically, if the disclosure is necessary for the utility, district or other public body  
 40 to render services to the customer, if the disclosure is required pursuant to a court order or if the  
 41 disclosure is otherwise required by federal or state law. The utility, district or other public body  
 42 may charge as appropriate for the costs of providing such information. The utility, district or other  
 43 public body may make customer records available to third party credit agencies on a regular basis  
 44 in connection with the establishment and management of customer accounts or in the event such  
 45 accounts are delinquent.

1 [(28)] (29) A record of the street and number of an employee’s address submitted to a special  
 2 district to obtain assistance in promoting an alternative to single occupant motor vehicle transpor-  
 3 tation.

4 [(29)] (30) Sensitive business records, capital development plans or financial or commercial in-  
 5 formation of Oregon Corrections Enterprises that is not customarily provided to business compet-  
 6 itors.

7 [(30)] (31) Documents, materials or other information submitted to the Director of the Depart-  
 8 ment of Consumer and Business Services in confidence by a state, federal, foreign or international  
 9 regulatory or law enforcement agency or by the National Association of Insurance Commissioners,  
 10 its affiliates or subsidiaries under ORS 646.380 to 646.398, 697.005 to 697.095, 697.602 to 697.842,  
 11 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 722, 723, 725 or 726, the Bank Act  
 12 or the Insurance Code when:

13 (a) The document, material or other information is received upon notice or with an under-  
 14 standing that it is confidential or privileged under the laws of the jurisdiction that is the source of  
 15 the document, material or other information; and

16 (b) The director has obligated the Department of Consumer and Business Services not to dis-  
 17 close the document, material or other information.

18 [(31)] (32) A county elections security plan developed and filed under ORS 254.074.

19 [(32)] (33) Information about review or approval of programs relating to the security of:

20 (a) Generation, storage or conveyance of:

21 (A) Electricity;

22 (B) Gas in liquefied or gaseous form;

23 (C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

24 (D) Petroleum products;

25 (E) Sewage; or

26 (F) Water.

27 (b) Telecommunication systems, including cellular, wireless or radio systems.

28 (c) Data transmissions by whatever means provided.

29 [(33)] (34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court  
 30 designates the information as confidential by rule under ORS 1.002.

31 [(34)] (35) If requested by a public safety officer as defined in ORS 181.610, the home address,  
 32 home telephone number and electronic mail address of the public safety officer. This exemption does  
 33 not apply to addresses and telephone numbers that are contained in county real property or lien  
 34 records.

35 **SECTION 2.** ORS 181.854 is amended to read:

36 181.854. (1) As used in this section:

37 (a) “Public body” has the meaning given that term in ORS 192.410.

38 (b) “Public safety employee” means a certified reserve officer, corrections officer, parole and  
 39 probation officer, police officer or youth correction officer as those terms are defined in ORS  
 40 181.610.

41 (2) A public body may not disclose a photograph of a public safety employee of the public body  
 42 without the written consent of the employee. This subsection does not apply to the use by the public  
 43 body of a photograph of a public safety employee.

44 (3) A public body may not disclose information about a personnel investigation of a public safety  
 45 employee of the public body if the investigation does not result in discipline of the employee.

1 (4) Subsection (3) of this section does not apply:

2 (a) When the public interest requires disclosure of the information.

3 (b) When the employee consents to disclosure in writing.

4 (c) When disclosure is necessary for an investigation by the public body, the Department of  
5 Public Safety Standards and Training or a citizen review body designated by the public body.

6 (d) When the public body determines that nondisclosure of the information would adversely af-  
7 fect the confidence of the public in the public body.

8 (5) If an investigation of a public safety employee of a public body results from a complaint, the  
9 public body may disclose to the complainant the disposition of the complaint and, to the extent the  
10 public body considers necessary to explain the action of the public body on the complaint, a written  
11 summary of information obtained in the investigation.

12 (6) A public body must notify a public safety employee of the public body if the public body re-  
13 ceives a request for:

14 (a) A photograph of the employee.

15 (b) Information about the employee that is exempt from disclosure under ORS 192.502 (2), (3) or  
16 [(34)] (35).

17 (c) Information about the employee that is prohibited from disclosure by subsection (3) of this  
18 section.

19 **SECTION 3.** ORS 285C.145 is amended to read:

20 285C.145. (1) The Legislative Assembly finds that the standard procedure for authorization in  
21 an enterprise zone inappropriately deters development or redevelopment of qualified buildings on  
22 speculation for subsequent sale or lease to eligible business firms.

23 (2) Notwithstanding ORS 285C.140 (1), a new building or structure or an addition to or modifi-  
24 cation of an existing building or structure may qualify for the exemption allowed under ORS  
25 285C.175 if the qualified property is leased or sold by an unrelated party to one or more authorized  
26 business firms after commencement of the construction, addition or modification but prior to use or  
27 occupancy of the qualified property.

28 (3) A business firm may not be considered authorized and is not qualified for the exemption al-  
29 lowed under ORS 285C.175 if the county assessor discovers prior to initially granting the exemption  
30 that the application for authorization was not submitted by the business firm in a timely manner in  
31 accordance with ORS 285C.140, except as allowed under subsection (2) of this section or ORS  
32 285C.140 (11) and (12).

33 (4) Records, communications or information submitted to a public body by a business firm for  
34 purposes of ORS 285C.050 to 285C.250 that identify a particular qualified property, that reveal in-  
35 vestment plans prior to authorization, that include the compensation the firm provides to firm em-  
36 ployees, that are described in ORS 192.502 [(16)] (17) or that are submitted under ORS 285C.225 or  
37 285C.235 are exempt from disclosure under ORS 192.410 to 192.505 and, as appropriate, shall be  
38 shared among the county assessor, the zone sponsor, the Department of Revenue and the Economic  
39 and Community Development Department.

40 **SECTION 4.** ORS 456.623 is amended to read:

41 456.623. (1) The Housing and Community Services Department shall establish a registry system  
42 for persons requesting to be notified when department-proposed funding awards are contemplated for  
43 multifamily housing projects.

44 (2) Any person may register with the department to receive the notification described in sub-  
45 section (1) of this section. A person may request notification for multifamily housing projects on a

1 statewide basis or may limit the request to projects within specific areas of the state as identified  
 2 by the department. The department may charge a reasonable fee for the registration.

3 (3) If the department proposes funding for a multifamily housing project, the department shall  
 4 send written notice of the funding proposal to all persons who are at that time registered to receive  
 5 the notice under this section. The department may send notice to persons the department believes  
 6 may be interested but who are not registered to receive notice. The department shall not proceed  
 7 with awarding funding for a multifamily housing project prior to the 30th day after the sending of  
 8 notice to all persons entitled under this subsection to notice of the funding proposal.

9 (4) Notice sent under this section shall be limited to stating the deadline for filing comments  
 10 and the type of housing, number of units, sponsor and location of the proposed project. The notice  
 11 shall not include any information made exempt from public disclosure under ORS 192.502 [(23)]  
 12 (24).

13 (5) During the period after the department proposes funding for a multifamily housing project  
 14 and prior to the department proceeding with awarding the funding, any interested person may file  
 15 comments regarding the project with the department.

16 (6) At the discretion of the Director of the Housing and Community Services Department, the  
 17 department may conduct a market study or take other actions in response to comments filed in re-  
 18 gard to multifamily housing projects proposed for funding.

19 (7) Subsections (3), (5) and (6) of this section apply only to multifamily housing project funding  
 20 for construction, acquisition or rehabilitation loans, grants or tax program awards that otherwise  
 21 do not include an independently prepared, project-specific market study as part of the department  
 22 review, approval or underwriting process.

23 (8) As used in this section, "housing project" has the meaning given that term in ORS 456.065.

24 **SECTION 5.** ORS 656.702 is amended to read:

25 656.702. (1) The records of the State Accident Insurance Fund Corporation, excepting employer  
 26 account records and claimant files, shall be open to public inspection. The accident experience re-  
 27 cords of the corporation shall be available to a bona fide rating organization to assist in making  
 28 workers' compensation rates but any costs involved in making the records available shall be borne  
 29 by the rating organization. Accident experience records of carrier-insured employers shall also be  
 30 available on the same terms to assist in making such rates.

31 (2) Disclosure of workers' compensation claim records of the Department of Consumer and  
 32 Business Services is governed by ORS 192.502 [(19)] (20).

33 **SECTION 6.** The amendments to ORS 192.502 by section 1 of this 2007 Act apply to re-  
 34 cords in the custody of the State Treasurer, the Oregon Investment Council, the Oregon  
 35 Growth Account Board or the agents of the treasurer, council or board before, on or after  
 36 the effective date of this 2007 Act.