

SENATE AMENDMENTS TO SENATE BILL 671

By COMMITTEE ON JUDICIARY

April 5

1 In line 2 of the printed bill, after “records” insert “; creating new provisions; amending ORS
2 40.225, 192.460 and 192.502; and declaring an emergency”.

3 Delete lines 4 through 11 and insert:

4 **“SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS 192.410 to
5 192.505.**

6 **“SECTION 2. (1) When a public record is not exempt from disclosure under ORS 192.502
7 (9)(b), in lieu of making the public record available for inspection by providing a copy of the
8 record, the public body may prepare and release a condensation from the record of the sig-
9 nificant facts that are not otherwise exempt from disclosure under ORS 192.410 to 192.505.
10 The release of the condensation does not waive any privilege under ORS 40.225 to 40.295.**

11 **“(2) The person seeking to inspect or receive a copy of any public record for which a
12 condensation of facts has been provided under this section may petition for review of the
13 denial to inspect or receive a copy of the records under ORS 192.410 to 192.505. In such a
14 review, the Attorney General, district attorney or court shall, in addition to reviewing the
15 records to which access was denied, compare those records to the condensation to determine
16 whether the condensation adequately describes the significant facts contained in the records.**

17 **“SECTION 3. ORS 40.225 is amended to read:**

18 **“40.225. (1) As used in this section, unless the context requires otherwise:**

19 **“(a) ‘Client’ means a person, public officer, corporation, association or other organization or
20 entity, either public or private, who is rendered professional legal services by a lawyer, or who
21 consults a lawyer with a view to obtaining professional legal services from the lawyer.**

22 **“(b) ‘Confidential communication’ means a communication not intended to be disclosed to third
23 persons other than those to whom disclosure is in furtherance of the rendition of professional legal
24 services to the client or those reasonably necessary for the transmission of the communication.**

25 **“(c) ‘Lawyer’ means a person authorized, or reasonably believed by the client to be authorized,
26 to practice law in any state or nation.**

27 **“(d) ‘Representative of the client’ means a principal, an employee, an officer or a director of the
28 client:**

29 **“(A) Who provides the client’s lawyer with information that was acquired during the course of,
30 or as a result of, such person’s relationship with the client as principal, employee, officer or direc-
31 tor, and is provided to the lawyer for the purpose of obtaining for the client the legal advice or
32 other legal services of the lawyer; or**

33 **“(B) Who, as part of such person’s relationship with the client as principal, employee, officer
34 or director, seeks, receives or applies legal advice from the client’s lawyer.**

35 **“(e) ‘Representative of the lawyer’ means one employed to assist the lawyer in the rendition of**

1 professional legal services, but does not include a physician making a physical or mental examina-
2 tion under ORCP 44.

3 “(2) A client has a privilege to refuse to disclose and to prevent any other person from disclos-
4 ing confidential communications made for the purpose of facilitating the rendition of professional
5 legal services to the client:

6 “(a) Between the client or the client’s representative and the client’s lawyer or a representative
7 of the lawyer;

8 “(b) Between the client’s lawyer and the lawyer’s representative;

9 “(c) By the client or the client’s lawyer to a lawyer representing another in a matter of common
10 interest;

11 “(d) Between representatives of the client or between the client and a representative of the
12 client; or

13 “(e) Between lawyers representing the client.

14 “(3) The privilege created by this section may be claimed by the client, a guardian or
15 conservator of the client, the personal representative of a deceased client, or the successor, trustee,
16 or similar representative of a corporation, association, or other organization, whether or not in ex-
17 istence. The person who was the lawyer or the lawyer’s representative at the time of the commu-
18 nication is presumed to have authority to claim the privilege but only on behalf of the client.

19 “(4) There is no privilege under this section:

20 “(a) If the services of the lawyer were sought or obtained to enable or aid anyone to commit
21 or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

22 “(b) As to a communication relevant to an issue between parties who claim through the same
23 deceased client, regardless of whether the claims are by testate or intestate succession or by inter
24 vivos transaction;

25 “(c) As to a communication relevant to an issue of breach of duty by the lawyer to the client
26 or by the client to the lawyer;

27 “(d) As to a communication relevant to an issue concerning an attested document to which the
28 lawyer is an attesting witness; or

29 “(e) As to a communication relevant to a matter of common interest between two or more cli-
30 ents if the communication was made by any of them to a lawyer retained or consulted in common,
31 when offered in an action between any of the clients.

32 “(5) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communi-
33 cation made to the office of public defense services established under ORS 151.216 for the purpose
34 of seeking preauthorization for or payment of nonroutine fees or expenses under ORS 135.055.

35 “(6) Notwithstanding subsection (4)(c) of this section and ORS 40.280, a privilege is maintained
36 under this section for a communication that is made to the office of public defense services estab-
37 lished under ORS 151.216 for the purpose of making, or providing information regarding, a complaint
38 against a lawyer providing public defense services.

39 “(7) **Notwithstanding ORS 40.280, a privilege is maintained under this section for a com-
40 munication ordered to be disclosed under ORS 192.410 to 192.505.**

41 “**SECTION 4.** ORS 192.460 is amended to read:

42 “192.460. (1) ORS 192.450 [*is equally applicable*] **applies** to the case of a person denied the right
43 to inspect or **to** receive a copy of any public record of a public body other than a state agency,
44 except that [*in such case*]:

45 “(a) The district attorney of the county in which the public body is located, or if it is located

1 in more than one county the district attorney of the county in which the administrative offices of
2 the public body are located, shall carry out the functions of the Attorney General[, and];

3 “(b) Any suit filed [shall] **must** be filed in the circuit court for [such county, and except that]
4 **the county described in paragraph (a) of this subsection; and**

5 “(c) The district attorney [shall] **may** not serve as counsel for the public body, in the cases
6 permitted under ORS 192.450 (3), unless the district attorney ordinarily serves as counsel for [it] **the**
7 **public body.**

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

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

13 “**SECTION 5.** ORS 192.502 is amended to read:

14 “192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

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

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

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

28 “(a) Does not apply to the addresses, dates of birth and telephone numbers of employees or
29 volunteers who are elected officials, except that a judge or district attorney subject to election may
30 seek to exempt the judge’s or district attorney’s address or telephone number, or both, under the
31 terms of ORS 192.445;

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

35 “(c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a
36 professional education association of which the substitute teacher may be a member; and

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

38 “(4) Information submitted to a public body in confidence and not otherwise required by law to
39 be submitted, where such information should reasonably be considered confidential, the public body
40 has obliged itself in good faith not to disclose the information, and when the public interest would
41 suffer by the disclosure.

42 “(5) Information or records of the Department of Corrections, including the State Board of
43 Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabili-
44 tation of a person in custody of the department or substantially prejudice or prevent the carrying
45 out of the functions of the department, if the public interest in confidentiality clearly outweighs the

1 public interest in disclosure.

2 “(6) Records, reports and other information received or compiled by the Director of the De-
3 partment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not
4 otherwise required by law to be made public, to the extent that the interests of lending institutions,
5 their officers, employees and customers in preserving the confidentiality of such information out-
6 weighs the public interest in disclosure.

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

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

10 “(9)(a) Public records or information the disclosure of which is prohibited or restricted or oth-
11 erwise made confidential or privileged under Oregon law.

12 **“(b) Subject to section 2 of this 2007 Act, paragraph (a) of this subsection does not apply
13 to factual information compiled in a public record when:**

14 **“(A) The basis for the claim of exemption is ORS 40.225;**

15 **“(B) The factual information is not prohibited from disclosure under any applicable state
16 or federal law, regulation or court order and is not otherwise exempt from disclosure under
17 ORS 192.410 to 192.505;**

18 **“(C) The factual information was compiled by or at the direction of an attorney as part
19 of an investigation on behalf of the public body in response to information of possible
20 wrongdoing by the public body;**

21 **“(D) The factual information was not compiled in preparation for litigation, arbitration
22 or an administrative proceeding that was reasonably likely to be initiated or that has been
23 initiated by or against the public body; and**

24 **“(E) The holder of the privilege under ORS 40.225 has made or authorized a public
25 statement characterizing or partially disclosing the factual information compiled by or at the
26 attorney’s direction.**

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

31 “(11) Records of the Energy Facility Siting Council concerning the review or approval of secu-
32 rity programs pursuant to ORS 469.530.

33 “(12) Employee and retiree address, telephone number and other nonfinancial membership re-
34 cords and employee financial records maintained by the Public Employees Retirement System pur-
35 suant to ORS chapters 238 and 238A.

36 “(13) Records submitted by private persons or businesses to the State Treasurer or the Oregon
37 Investment Council relating to proposed acquisition, exchange or liquidation of public investments
38 under ORS chapter 293 may be treated as exempt from disclosure when and only to the extent that
39 disclosure of such records reasonably may be expected to substantially limit the ability of the
40 Oregon Investment Council to effectively compete or negotiate for, solicit or conclude such trans-
41 actions. Records which relate to concluded transactions are not subject to this exemption.

42 “(14) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning
43 the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated
44 as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

45 “(15) Reports of unclaimed property filed by the holders of such property to the extent permitted

1 by ORS 98.352.

2 “(16) The following records, communications and information submitted to the Oregon Economic
3 and Community Development Commission, the Economic and Community Development Department,
4 the State Department of Agriculture, the Oregon Growth Account Board, the Port of Portland or
5 other ports, as defined in ORS 777.005, by applicants for investment funds, loans or services includ-
6 ing, but not limited to, those described in ORS 285A.224:

7 “(a) Personal financial statements.

8 “(b) Financial statements of applicants.

9 “(c) Customer lists.

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

15 “(e) Production, sales and cost data.

16 “(f) Marketing strategy information that relates to applicant’s plan to address specific markets
17 and applicant’s strategy regarding specific competitors.

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

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

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

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

31 “(18) All information supplied by a person under ORS 151.485 for the purpose of requesting ap-
32 pointed counsel, and all information supplied to the court from whatever source for the purpose of
33 verifying the financial eligibility of a person pursuant to ORS 151.485.

34 “(19) Workers’ compensation claim records of the Department of Consumer and Business Ser-
35 vices, except in accordance with rules adopted by the Director of the Department of Consumer and
36 Business Services, in any of the following circumstances:

37 “(a) When necessary for insurers, self-insured employers and third party claim administrators to
38 process workers’ compensation claims.

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

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

43 “(d) When a worker or the worker’s representative requests review of the worker’s claim record.

44 “(20) Sensitive business records or financial or commercial information of the Oregon Health
45 and Science University that is not customarily provided to business competitors.

1 “(21) Records of Oregon Health and Science University regarding candidates for the position of
2 president of the university.

3 “(22) The records of a library, including circulation records, showing use of specific library
4 material by a named person or consisting of the name of a library patron together with the address
5 or telephone number, or both, of the patron.

6 “(23) The following records, communications and information obtained by the Housing and
7 Community Services Department in connection with the department’s monitoring or administration
8 of financial assistance or of housing or other developments:

9 “(a) Personal and corporate financial statements and information, including tax returns.

10 “(b) Credit reports.

11 “(c) Project appraisals.

12 “(d) Market studies and analyses.

13 “(e) Articles of incorporation, partnership agreements and operating agreements.

14 “(f) Commitment letters.

15 “(g) Project pro forma statements.

16 “(h) Project cost certifications and cost data.

17 “(i) Audits.

18 “(j) Project tenant correspondence.

19 “(k) Personal information about a tenant.

20 “(L) Housing assistance payments.

21 “(24) Raster geographic information system (GIS) digital databases, provided by private
22 forestland owners or their representatives, voluntarily and in confidence to the State Forestry De-
23 partment, that is not otherwise required by law to be submitted.

24 “(25) Sensitive business, commercial or financial information furnished to or developed by a
25 public body engaged in the business of providing electricity or electricity services, if the information
26 is directly related to a transaction described in ORS 261.348, or if the information is directly related
27 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and
28 disclosure of the information would cause a competitive disadvantage for the public body or its re-
29 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-
30 velopment or review of generally applicable rate schedules.

31 “(26) Sensitive business, commercial or financial information furnished to or developed by the
32 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath
33 Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085
34 and disclosure of the information would cause a competitive disadvantage for the Klamath
35 Cogeneration Project. This subsection does not apply to cost-of-service studies used in the develop-
36 ment or review of generally applicable rate schedules.

37 “(27) Personally identifiable information about customers of a municipal electric utility or a
38 people’s utility district or the names, dates of birth, driver license numbers, telephone numbers,
39 electronic mail addresses or Social Security numbers of customers who receive water, sewer or
40 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-
41 lease personally identifiable information about a customer, and a public body providing water, sewer
42 or storm drain services may release the name, date of birth, driver license number, telephone num-
43 ber, electronic mail address or Social Security number of a customer, if the customer consents in
44 writing or electronically, if the disclosure is necessary for the utility, district or other public body
45 to render services to the customer, if the disclosure is required pursuant to a court order or if the

1 disclosure is otherwise required by federal or state law. The utility, district or other public body
2 may charge as appropriate for the costs of providing such information. The utility, district or other
3 public body may make customer records available to third party credit agencies on a regular basis
4 in connection with the establishment and management of customer accounts or in the event such
5 accounts are delinquent.

6 “(28) A record of the street and number of an employee’s address submitted to a special district
7 to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

8 “(29) Sensitive business records, capital development plans or financial or commercial informa-
9 tion of Oregon Corrections Enterprises that is not customarily provided to business competitors.

10 “(30) Documents, materials or other information submitted to the Director of the Department
11 of Consumer and Business Services in confidence by a state, federal, foreign or international regu-
12 latory or law enforcement agency or by the National Association of Insurance Commissioners, its
13 affiliates or subsidiaries under ORS 646.380 to 646.398, 697.005 to 697.095, 697.602 to 697.842, 705.137,
14 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 722, 723, 725 or 726, the Bank Act or the
15 Insurance Code when:

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

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

21 “(31) A county elections security plan developed and filed under ORS 254.074.

22 “(32) Information about review or approval of programs relating to the security of:

23 “(a) Generation, storage or conveyance of:

24 “(A) Electricity;

25 “(B) Gas in liquefied or gaseous form;

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

27 “(D) Petroleum products;

28 “(E) Sewage; or

29 “(F) Water.

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

31 “(c) Data transmissions by whatever means provided.

32 “(33) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court
33 designates the information as confidential by rule under ORS 1.002.

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

37 “**SECTION 6. Section 2 of this 2007 Act and the amendments to ORS 40.225, 192.460 and**
38 **192.502 by sections 3 to 5 of this 2007 Act apply to public records created on or after the ef-**
39 **fective date of this 2007 Act.**

40 “**SECTION 7. This 2007 Act being necessary for the immediate preservation of the public**
41 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**
42 **on its passage.”.**