

House Bill 3091

Sponsored by Representative CANNON (at the request of Pete Forsyth)

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**.

Prohibits state agencies from claiming copyright protection for works produced by state employees or using funds provided by State Treasury.

A BILL FOR AN ACT

1
2 Relating to copyright for works produced by state agencies; creating new provisions; and amending
3 ORS 173.763, 183.360, 183.365, 282.010, 291.042, 291.055, 456.128 and 456.562.

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

5 **SECTION 1. (1) As used in this section:**

6 (a) **"Copyright" means copyright protection provided under the United States Constitu-**
7 **tion and 17 U.S.C. 101 et seq.**

8 (b) **"State agency" means a state officer, department, board, commission or court created**
9 **by the Oregon Constitution or the statutes of this state.**

10 (2) **Except as otherwise provided by law, a state agency may not apply for or claim cop-**
11 **yright to a work created by an employee of the state agency or with funds provided by the**
12 **State Treasury. The state agency shall place such a work in the public domain.**

13 **SECTION 2. ORS 173.763 is amended to read:**

14 173.763. (1)(a) The Legislative Administration Committee in conjunction with the Legislative
15 Counsel Committee shall, with the advice of the President of the Senate, through the Secretary of
16 the Senate, and the Speaker of the House of Representatives, through the Chief Clerk of the House
17 of Representatives, make all of the following information available to the public and members of the
18 Legislative Assembly in electronic form:

19 (A) The legislative calendar, the schedule of legislative committee hearings, a list of matters
20 pending on the floors of both houses of the Legislative Assembly and a list of the committees of the
21 Legislative Assembly and *[their]* members **of the committees**.

22 (B) The text of each bill introduced in each current legislative session, including each amended
23 and enrolled form of the bill.

24 (C) The bill history of each bill introduced *[and amended]* in each current legislative session.

25 (D) The bill status of each bill introduced *[and amended]* in each current legislative session.

26 (E) All vote information concerning each bill in each current legislative session.

27 (F) Any veto message concerning a bill in each current legislative session.

28 (G) The Oregon Constitution.

29 (H) All Oregon Laws enacted on and after September 9, 1995.

30 (I) The Constitution of the United States.

31 (b) The Legislative Administration Committee, in *[its]* **the committee's** discretion, may make

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 available in electronic form to the public and members of the Legislative Assembly Staff Measure
 2 Summaries for each bill in a current legislative session.

3 (2)(a) The information identified in subsection (1) of this section *[shall]* **must** be made available
 4 to the public through the *[largest nonproprietary, nonprofit cooperative public computer network]*
 5 **Internet**. The information *[shall]* **must** be made available in one or more formats and by one or
 6 more means in order to provide the general public in this state with the greatest feasible access.
 7 *[Any]* **A** person who accesses the information may access all or *[any]* **a** part of the information. The
 8 information may also be made available by *[any]* other means that would facilitate public access to
 9 the information.

10 (b) Except as provided in paragraph (c) of this subsection, the Legislative Administration Com-
 11 mittee shall determine the most cost-effective formats and procedures for the timely release of the
 12 information in electronic form.

13 (c) Pursuant to ORS 171.275, the Legislative Counsel Committee, in *[its]* **the committee's** dis-
 14 cretion, may authorize the release of the text of Oregon Revised Statutes in electronic form.

15 (3) *[Any]* Documentation that describes the electronic digital formats of the information identi-
 16 fied in subsection (1) of this section and is available to the public shall be made available through
 17 the *[computer network specified in subsection (2) of this section]* **Internet**.

18 (4) Personal information concerning a person who accesses the information identified in sub-
 19 section (1) of this section may be maintained only for the purpose of providing service to the person.

20 (5) No fee or other charge may be imposed by the Legislative Administration Committee as a
 21 condition of accessing the information identified in subsection (1) of this section through the *[com-*
 22 *puter network specified in subsection (2) of this section]* **Internet**.

23 *[(6) No action taken pursuant to this section shall be deemed to alter or relinquish any copyright*
 24 *or other proprietary interest or entitlement of the State of Oregon relative to any of the information*
 25 *made available pursuant to subsection (1) or (2)(c) of this section.]*

26 **SECTION 3.** ORS 183.360 is amended to read:

27 183.360. (1) The Secretary of State shall compile, index and publish all rules adopted by each
 28 agency. The compilation *[shall]* **must** be supplemented or revised as often as necessary and at least
 29 once every six months. *[Such]* **The** compilation supersedes *[any]* other rules. The Secretary of State
 30 may make such compilations of other material published in the bulletin as are desirable. The Sec-
 31 retary of State *[may copyright the compilations prepared under this subsection, and]* may establish
 32 policies for the revision, clarification, classification, arrangement, indexing, printing, binding, publi-
 33 cation, sale and distribution of the compilations.

34 (2)(a) The Secretary of State has discretion to omit from the compilation rules the publication
 35 of which would be unduly cumbersome or expensive if the rule in printed or processed form is made
 36 available on application to the adopting agency, and if the compilation contains a notice summariz-
 37 ing the omitted rule and stating how a copy *[thereof]* **of the rule** may be obtained. In preparing the
 38 compilation the Secretary of State *[shall]* **may** not alter the sense, meaning, effect or substance of
 39 *[any]* **a** rule, but may renumber sections and parts of sections of the rules, change the wording of
 40 headnotes, rearrange sections, change reference numbers to agree with renumbered chapters,
 41 sections or other parts, substitute the proper subsection, section or chapter or other division num-
 42 bers, change capitalization for the purpose of uniformity, and correct manifest clerical or
 43 typographical errors.

44 (b) The Secretary of State may by rule prescribe requirements, not inconsistent with law, for the
 45 manner and form for filing of rules adopted or amended by agencies. The Secretary of State may

1 refuse to accept for filing any rules [*which*] **that** do not comply with those requirements.

2 (3) The Secretary of State shall publish at least at monthly intervals a bulletin [*which*] **that**:

3 (a) Briefly indicates the agencies that are proposing to adopt, amend or repeal a rule, the sub-
4 ject matter of the rule and the name, address and telephone number of an agency officer or employee
5 from whom information and a copy of [*any*] a proposed rule may be obtained;

6 (b) Contains the text or a brief description of all rules filed under ORS 183.355 since the last
7 bulletin indicating the effective date of the rule;

8 (c) Contains executive orders of the Governor; and

9 (d) Contains orders issued by the Director of the Department of Revenue under ORS 305.157
10 extending tax statutes of limitation.

11 (4) Courts shall take judicial notice of rules and executive orders filed with the Secretary of
12 State.

13 (5) The compilation required by subsection (1) of this section [*shall*] **must** be titled Oregon Ad-
14 ministrative Rules and may be cited as “OAR” with appropriate numerical indications.

15 **SECTION 4.** ORS 183.365 is amended to read:

16 183.365. (1) Pursuant to ORS 183.360, the Secretary of State shall publish in electronic form
17 administrative rules adopted or amended by state agencies and make the information available to
18 the public and members of the Legislative Assembly.

19 (2) The Secretary of State shall determine the most cost-effective format and procedures for the
20 timely release of the information described in subsection (1) of this section in electronic form.

21 (3) Pursuant to ORS 183.360 (2)(b), the Secretary of State shall establish requirements for filing
22 administrative rules adopted or amended by state agencies for entry into computer networks for the
23 purpose of subsection (1) of this section.

24 (4) Although each state agency is responsible for [*its*] **the agency’s** information resources, cen-
25 tralized information resource management must also exist to:

26 (a) Provide public access to the information described in subsection (1) of this section;

27 (b) Provide technical assistance to state agencies; and

28 (c) Ensure that the information resources needed to implement subsection (1) of this section are
29 addressed along with the needs of the individual agencies.

30 (5) Personal information concerning a person who accesses the information identified in sub-
31 section (1) of this section may be maintained only for the purpose of providing service to the person.

32 (6) [*No fee or other charge may be imposed by*] The Secretary of State **may not impose a fee**
33 **or other charge** as a condition of accessing the information identified in subsection (1) of this
34 section.

35 [*(7) No action taken pursuant to this section shall be deemed to alter or relinquish any copyright*
36 *or other proprietary interest or entitlement of the State of Oregon relative to any of the information*
37 *made available pursuant to subsection (1) of this section.*]

38 **SECTION 5.** ORS 282.010 is amended to read:

39 282.010. As used in ORS 282.010 to 282.150, [*unless the context otherwise requires:*]

40 [(1) “Department” means the Oregon Department of Administrative Services.]

41 [(2)(a) “Printed public document” means informational matter produced for public distribution re-
42 gardless of format, method of reproduction, source or copyright, originating in any state agency or
43 produced with the imprint of, by the authority of or at the total or partial expense of any state
44 agency.]

45 [(b) “Printed public document” does not include:]

1 [(A) Correspondence, forms, interoffice or intraoffice memoranda;]

2 [(B) Legislative bills, calendars and interim committee reports made available under ORS
3 171.206;]

4 [(C) Oregon Revised Statutes or any edition thereof; or]

5 [(D) Reports and publications of the Supreme Court, the Court of Appeals and the Oregon Tax
6 Court.]

7 [(3)] “printing” means printing, duplicating and copying.

8 **SECTION 6.** ORS 291.042 is amended to read:

9 291.042. (1) Subject to the approval of the Joint Legislative Committee on Information Manage-
10 ment and Technology, the Oregon Department of Administrative Services:

11 (a) May obtain [*copyrights and*] patents on [*copyrightable or*] patentable data processing pro-
12 grams, information or materials developed, published or produced by state agency staff.

13 (b) May cause to have sold, leased, or otherwise made available such data processing programs,
14 information or materials to [*any*] **an** agency or legislative body of [*any*] **a** state or the federal gov-
15 ernment under such terms and conditions as may be agreed to by the committee and the agencies.

16 (2) Moneys collected under this section shall be credited to the General Fund and, less agency
17 expenses accrued in developing, producing and distributing software and in training software users,
18 [*shall be*] **are** available for general governmental purposes. However, if resources expended for such
19 development, production, distribution and training activities were from fees or assessments charged
20 and collected by the agency, the net proceeds of moneys collected under this section [*shall*] **must**
21 be credited to the same accounts to which the fees or assessments are credited and [*shall*] **must** be
22 used to reduce the fees or assessments charged by the agency to the extent permitted by law.

23 **SECTION 7.** ORS 456.128 is amended to read:

24 456.128. (1) As used in this section:

25 (a) “Housing authority” means a housing authority created under ORS 456.075. “Housing au-
26 thority” includes a person exercising delegated powers and duties under ORS 456.135, a local gov-
27 ernment electing under ORS 456.095 to have the powers of a housing authority and a body to which
28 powers and authority are transferred under ORS 456.233.

29 (b) “Intellectual property” and “person” have the meanings given those terms in ORS 456.562.

30 (2) Subject to any superior patent rights or copyrights, a housing authority may [*license,*] share
31 or otherwise provide for the use by a person of intellectual property acquired or developed by the
32 authority. [*Except as provided in this subsection, the housing authority may charge fees for licensing,*
33 *sharing or otherwise providing for the use of the intellectual property. The housing authority may not*
34 *charge a fee under this subsection to a federal, state or local government body.*]

35 (3) A housing authority may take actions that the authority deems necessary and appropriate
36 to carry out this section, including but not limited to applying for patents [*or copyright*
37 *registration*] to perfect or preserve the authority’s rights in intellectual property.

38 **SECTION 8.** ORS 456.562 is amended to read:

39 456.562. (1) As used in this section:

40 (a) “Intellectual property” means computer programs, software, software tools and data.

41 (b) “Person” means a person as defined in ORS 174.100, a federal, state or local government
42 body, a Native American tribe or an agent or representative of a tribe.

43 (2) Subject to any superior patent rights or copyrights, the Housing and Community Services
44 Department may [*license,*] share or otherwise provide for the use by a person of intellectual property
45 acquired or developed by the department.

1 *[(3) Except as provided in this subsection, the department may charge reasonable fees for licensing,*
 2 *sharing or otherwise providing for the use of intellectual property under subsection (2) of this section.*
 3 *The department may not charge a fee under this subsection to a federal, state or local government body.*
 4 *Moneys from the fees are continuously appropriated to the department for the purpose of acquiring,*
 5 *developing or providing for the use of intellectual property.]*

6 [(4)] (3) The department may take actions that the department deems necessary and appropriate
 7 to carry out the authority granted under this section, including but not limited to applying for pat-
 8 ents [or copyright registration] to perfect or preserve the department’s rights in intellectual property.

9 [(5)] (4) ORS 291.042 does not apply to intellectual property or fees described in this section.

10 **SECTION 9.** ORS 291.055 is amended to read:

11 291.055. (1) Notwithstanding any other law that grants to a state agency the authority to es-
 12 tablish fees, all new state agency fees or fee increases adopted after July 1 of any odd-numbered
 13 year:

14 (a) Are not effective for agencies in the executive department of government unless approved
 15 in writing by the Director of the Oregon Department of Administrative Services;

16 (b) Are not effective for agencies in the judicial department of government unless approved in
 17 writing by the Chief Justice of the Supreme Court;

18 (c) Are not effective for agencies in the legislative department of government unless approved
 19 in writing by the President of the Senate and the Speaker of the House of Representatives;

20 (d) Shall be reported by the state agency to the Oregon Department of Administrative Services
 21 within 10 days of their adoption; and

22 (e) Are rescinded on July 1 of the next following odd-numbered year, or on adjournment sine
 23 die of the regular session of the Legislative Assembly meeting in that year, whichever is later, un-
 24 less otherwise authorized by enabling legislation setting forth the approved fees.

25 (2) This section does not apply to:

26 (a) Any tuition or fees charged by the State Board of Higher Education and state institutions
 27 of higher education.

28 (b) Taxes or other payments made or collected from employers for unemployment insurance re-
 29 quired by ORS chapter 657 or premium assessments required by ORS 656.612 and 656.614 or contri-
 30 butions and assessments calculated by cents per hour for workers’ compensation coverage required
 31 by ORS 656.506.

32 (c) Fees or payments required for:

33 (A) Health care services provided by the Oregon Health and Science University, by the Oregon
 34 Veterans’ Homes and by other state agencies and institutions pursuant to ORS 179.610 to 179.770.

35 (B) Assessments and premiums paid to the Oregon Medical Insurance Pool established by ORS
 36 735.614 and 735.625.

37 (C) Copayments and premiums paid to the Oregon medical assistance program.

38 (d) Fees created or authorized by statute that have no established rate or amount but are cal-
 39 culated for each separate instance for each fee payer and are based on actual cost of services pro-
 40 vided.

41 (e) State agency charges on employees for benefits and services.

42 (f) Any intergovernmental charges.

43 (g) Forest protection district assessment rates established by ORS 477.210 to 477.265 and the
 44 Oregon Forest Land Protection Fund fees established by ORS 477.760.

45 (h) State Department of Energy assessments required by ORS 469.421 (8) and 469.681.

1 (i) Any charges established by the State Parks and Recreation Director in accordance with ORS
2 565.080 (3).

3 (j) Assessments on premiums charged by the Insurance Division of the Department of Consumer
4 and Business Services pursuant to ORS 731.804 or fees charged by the Division of Finance and
5 Corporate Securities of the Department of Consumer and Business Services to banks, trusts and
6 credit unions pursuant to ORS 706.530 and 723.114.

7 (k) Public Utility Commission operating assessments required by ORS 756.310 or charges paid
8 to the Residential Service Protection Fund required by chapter 290, Oregon Laws 1987.

9 *[(L) Fees charged by the Housing and Community Services Department for intellectual property*
10 *pursuant to ORS 456.562.]*

11 *[(m)]* (L) New or increased fees that are anticipated in the legislative budgeting process for an
12 agency, revenues from which are included, explicitly or implicitly, in the legislatively adopted
13 budget for the agency.

14 *[(n)]* (m) Tolls approved by the Oregon Transportation Commission pursuant to ORS 383.004.

15 (3)(a) Fees temporarily decreased for competitive or promotional reasons or because of unex-
16 pected and temporary revenue surpluses may be increased to not more than their prior level without
17 compliance with subsection (1) of this section if, at the time the fee is decreased, the state agency
18 specifies the following:

19 (A) The reason for the fee decrease; and

20 (B) The conditions under which the fee will be increased to not more than its prior level.

21 (b) Fees that are decreased for reasons other than those described in paragraph (a) of this sub-
22 section may not be subsequently increased except as allowed by ORS 291.050 to 291.060 and 294.160.

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