

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2244

By COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS
PROTECTION

June 8

1 On page 1 of the printed A-engrossed bill, line 2, delete the first “and” and after “192.005” delete
2 the rest of the line and insert “and 192.502; and declaring an emergency.”.

3 Delete lines 4 through 24 and delete pages 2 through 12 and insert:

4 “**SECTION 1.** ORS 192.005 is amended to read:

5 “192.005. As used in ORS 192.005 to 192.170, unless the context requires otherwise:

6 “(1) ‘Archivist’ means the State Archivist.

7 “(2) ‘Photocopy’ includes a photograph, microphotograph and any other reproduction on paper
8 or film in any scale.

9 “(3) ‘Photocopying’ means the process of reproducing, in the form of a photocopy, a public re-
10 cord or writing.

11 “(4) ‘Political subdivision’ means a city, county, district or any other municipal or public cor-
12 poration in this state.

13 “(5) ‘Public record’ [*includes, but is not limited to, a document, book, paper, photograph, file, sound*
14 *recording or machine readable electronic record, regardless of physical form or characteristics, made,*
15 *received, filed or recorded in pursuance of law or in connection with the transaction of public business,*
16 *whether or not confidential or restricted in use. ‘Public record’]:*

17 “(a) **Means any information that:**

18 “(A) **Is prepared, owned, used or retained by a state agency or political subdivision;**

19 “(B) **Relates to an activity, transaction or function of a state agency or political subdi-
20 vision; and**

21 “(C) **Is necessary to satisfy the fiscal, legal, administrative or historical policies, re-
22 quirements or needs of the state agency or political subdivision.**

23 “(b) Does not include:

24 “[*a*] (A) Records of the Legislative Assembly, its committees, officers and employees.

25 “[*b*] (B) Library and museum materials made or acquired and preserved solely for reference
26 or exhibition purposes.

27 “[*c*] (C) Records or information concerning the location of archaeological sites or objects as
28 those terms are defined in ORS 358.905.

29 “[*d*] (D) Extra copies of a document, preserved only for convenience of reference.

30 “[*e*] (E) A stock of publications.

31 “[*f*] (F) Messages on voice mail or on other telephone message storage and retrieval systems.

32 “(G) **Records of the Judicial Department or its officers and employees.**

33 “(H) **Spoken communication that is not recorded.**

34 “(6) ‘State agency’:

35 “(a) **Means any state officer, department, board[,] or commission [or court] created by the Con-**

1 stitution or statutes of this state. [However, 'state agency']

2 “(b) Does not include:

3 “(A) The Legislative Assembly or its committees, officers and employees; or

4 “(B) The Judicial Department or its officers and employees.

5 “**SECTION 2. Sections 3 and 4 of this 2011 Act are added to and made a part of ORS**
6 **192.005 to 192.170.**

7 “**SECTION 3. (1) Each state agency shall have a written policy that sets forth the**
8 **agency’s use, retention and ownership of public records. The policy shall ensure that public**
9 **records are being maintained and managed consistently within the agency from the time of**
10 **creation of a public record to the time of final disposition of the public record.**

11 “**(2) Each state agency shall submit the written policy and any subsequent amendment**
12 **of the policy to the State Archivist for approval before the policy takes effect or the**
13 **amendment to the policy takes effect.**

14 “**SECTION 4. Each state agency or political subdivision shall maintain a public record or**
15 **accurate copy of a public record in accordance with a retention schedule authorized under**
16 **ORS 192.105 or section 3 of this 2011 Act, without regard to the technology or medium used**
17 **to create or communicate the record.**

18 “**SECTION 5. Sections 3 and 4 of this 2011 Act and the amendments to ORS 192.005 by**
19 **section 1 of this 2011 Act become operative on January 1, 2012.**

20 “**SECTION 6. ORS 192.502, as amended by section 15, chapter 76, Oregon Laws 2010, is**
21 **amended to read:**

22 “192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

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

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

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

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

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

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

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

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

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

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

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

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

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

20 “(b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual informa-
21 tion compiled in a public record when:

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

23 “(B) The factual information is not prohibited from disclosure under any applicable state or
24 federal law, regulation or court order and is not otherwise exempt from disclosure under ORS
25 192.410 to 192.505;

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

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

32 “(E) The holder of the privilege under ORS 40.225 has made or authorized a public statement
33 characterizing or partially disclosing the factual information compiled by or at the attorney’s di-
34 rection.

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

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

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

44 “(13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the
45 agents of the treasurer or the council relating to active or proposed publicly traded investments

1 under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or
2 liquidation of the investments. For the purposes of this subsection:

3 “(a) The exemption does not apply to:

4 “(A) Information in investment records solely related to the amount paid directly into an in-
5 vestment by, or returned from the investment directly to, the treasurer or council; or

6 “(B) The identity of the entity to which the amount was paid directly or from which the amount
7 was received directly.

8 “(b) An investment in a publicly traded investment is no longer active when acquisition, ex-
9 change or liquidation of the investment has been concluded.

10 “(14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the
11 Oregon Growth Account Board or the agents of the treasurer, council or board relating to actual
12 or proposed investments under ORS chapter 293 or 348 in a privately placed investment fund or a
13 private asset including but not limited to records regarding the solicitation, acquisition, deployment,
14 exchange or liquidation of the investments including but not limited to:

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

17 “(B) Financial statements of an investment fund, an asset ownership or their respective invest-
18 ment vehicles.

19 “(C) Meeting materials of an investment fund, an asset ownership or their respective investment
20 vehicles.

21 “(D) Records containing information regarding the portfolio positions in which an investment
22 fund, an asset ownership or their respective investment vehicles invest.

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

25 “(F) Investment agreements and related documents.

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

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

28 “(B) The dollar amount of the commitment made to each privately placed investment fund since
29 inception of the fund.

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

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

35 “(E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately
36 placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment
37 Council, the Oregon Growth Account Board or the agents of the treasurer, council or board.

38 “(F) The net internal rate of return of each privately placed investment fund since inception of
39 the fund.

40 “(G) The investment multiple of each privately placed investment fund since inception of the
41 fund.

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

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

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

4 “(16) Reports of unclaimed property filed by the holders of such property to the extent permitted
5 by ORS 98.352.

6 “(17)(a) The following records, communications and information submitted to the Oregon Busi-
7 ness Development Commission, the Oregon Business Development Department, the State Department
8 of Agriculture, the Oregon Growth Account Board, the Port of Portland or other ports, as defined
9 in ORS 777.005, by applicants for investment funds, loans or services including, but not limited to,
10 those described in ORS 285A.224:

11 “(A) Personal financial statements.

12 “(B) Financial statements of applicants.

13 “(C) Customer lists.

14 “(D) Information of an applicant pertaining to litigation to which the applicant is a party if the
15 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such
16 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been
17 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-
18 ery or deposition statutes to a party to litigation or potential litigation.

19 “(E) Production, sales and cost data.

20 “(F) Marketing strategy information that relates to applicant’s plan to address specific markets
21 and applicant’s strategy regarding specific competitors.

22 “(b) The following records, communications and information submitted to the State Department
23 of Energy by applicants for tax credits:

24 “(A) Personal financial statements.

25 “(B) Financial statements of applicants.

26 “(C) Customer lists.

27 “(D) Information of an applicant pertaining to litigation to which the applicant is a party if the
28 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such
29 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been
30 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-
31 ery or deposition statutes to a party to litigation or potential litigation.

32 “(E) Production, sales and cost data.

33 “(F) Marketing strategy information that relates to applicant’s plan to address specific markets
34 and applicant’s strategy regarding specific competitors.

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

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

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

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

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

6 “(20) Workers’ compensation claim records of the Department of Consumer and Business Ser-
7 vices, except in accordance with rules adopted by the Director of the Department of Consumer and
8 Business Services, in any of the following circumstances:

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

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

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

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

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

18 “(22) Records of Oregon Health and Science University regarding candidates for the position of
19 president of the university.

20 “(23) The records of a library, including:

21 “(a) Circulation records, showing use of specific library material by a named person;

22 “(b) The name of a library patron together with the address or telephone number of the patron;
23 and

24 “(c) The electronic mail address of a patron.

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

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

29 “(b) Credit reports.

30 “(c) Project appraisals.

31 “(d) Market studies and analyses.

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

33 “(f) Commitment letters.

34 “(g) Project pro forma statements.

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

36 “(i) Audits.

37 “(j) Project tenant correspondence.

38 “(k) Personal information about a tenant.

39 “(L) Housing assistance payments.

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

43 “(26) Sensitive business, commercial or financial information furnished to or developed by a
44 public body engaged in the business of providing electricity or electricity services, if the information
45 is directly related to a transaction described in ORS 261.348, or if the information is directly related

1 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and
2 disclosure of the information would cause a competitive disadvantage for the public body or its re-
3 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-
4 velopment or review of generally applicable rate schedules.

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

11 “(28) Personally identifiable information about customers of a municipal electric utility or a
12 people’s utility district or the names, dates of birth, driver license numbers, telephone numbers,
13 electronic mail addresses or Social Security numbers of customers who receive water, sewer or
14 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-
15 lease personally identifiable information about a customer, and a public body providing water, sewer
16 or storm drain services may release the name, date of birth, driver license number, telephone num-
17 ber, electronic mail address or Social Security number of a customer, if the customer consents in
18 writing or electronically, if the disclosure is necessary for the utility, district or other public body
19 to render services to the customer, if the disclosure is required pursuant to a court order or if the
20 disclosure is otherwise required by federal or state law. The utility, district or other public body
21 may charge as appropriate for the costs of providing such information. The utility, district or other
22 public body may make customer records available to third party credit agencies on a regular basis
23 in connection with the establishment and management of customer accounts or in the event such
24 accounts are delinquent.

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

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

29 “(31) Documents, materials or other information submitted to the Director of the Department
30 of Consumer and Business Services in confidence by a state, federal, foreign or international regu-
31 latory or law enforcement agency or by the National Association of Insurance Commissioners, its
32 affiliates or subsidiaries under ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602
33 to 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank
34 Act or the Insurance Code when:

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

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

40 “(32) A county elections security plan developed and filed under ORS 254.074.

41 “(33) Information about review or approval of programs relating to the security of:

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

43 “(A) Electricity;

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

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

1 “(D) Petroleum products;
2 “(E) Sewage; or
3 “(F) Water.
4 “(b) Telecommunication systems, including cellular, wireless or radio systems.
5 “(c) Data transmissions by whatever means provided.
6 “(34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court
7 designates the information as confidential by rule under ORS 1.002.
8 “(35)(a) Employer account records of the State Accident Insurance Fund Corporation.
9 “(b) As used in this subsection, ‘employer account records’ means all records maintained in any
10 form that are specifically related to the account of any employer insured, previously insured or un-
11 der consideration to be insured by the State Accident Insurance Fund Corporation and any infor-
12 mation obtained or developed by the corporation in connection with providing, offering to provide
13 or declining to provide insurance to a specific employer. ‘Employer account records’ includes, but
14 is not limited to, an employer’s payroll records, premium payment history, payroll classifications,
15 employee names and identification information, experience modification factors, loss experience and
16 dividend payment history.
17 “(c) The exemption provided by this subsection may not serve as the basis for opposition to the
18 discovery documents in litigation pursuant to applicable rules of civil procedure.
19 “(36)(a) Claimant files of the State Accident Insurance Fund Corporation.
20 “(b) As used in this subsection, ‘claimant files’ includes, but is not limited to, all records held
21 by the corporation pertaining to a person who has made a claim, as defined in ORS 656.005, and all
22 records pertaining to such a claim.
23 “(c) The exemption provided by this subsection may not serve as the basis for opposition to the
24 discovery documents in litigation pursuant to applicable rules of civil procedure.
25 “(37) Except as authorized by ORS 408.425, records that certify or verify an individual’s dis-
26 charge or other separation from military service.
27 “(38) **Records of or submitted to a domestic violence service or resource center that re-**
28 **late to the name or personal information of an individual who visits a center for service,**
29 **including the date of service, the type of service received, referrals or contact information**
30 **or personal information of a family member of the individual. As used in this subsection,**
31 **‘domestic violence service or resource center’ means an entity, the primary purpose of which**
32 **is to assist persons affected by domestic or sexual violence by providing referrals, resource**
33 **information or other assistance specifically of benefit to domestic or sexual violence victims.**
34 “**SECTION 7. This 2011 Act being necessary for the immediate preservation of the public**
35 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
36 **on its passage.”**
37