

HOUSE AMENDMENTS TO HOUSE BILL 4130

By COMMITTEE ON RULES

February 19

1 On page 1 of the printed bill, line 2, after “provisions;” insert “and”.

2 In line 3, delete “171.427, 192.018, 192.105,” and delete “; and declaring an” and insert a period.

3 Delete line 4.

4 Delete lines 6 through 22 and delete pages 2 through 8 and insert:

“PUBLIC RECORDS PRODUCTION

5
6
7
8 “**SECTION 1.** ORS 192.440 is amended to read:

9 “192.440. (1) The custodian of any public record that a person has a right to inspect shall give
10 the person, upon request:

11 “(a) A copy of the public record if the public record is of a nature permitting copying; or

12 “(b) A reasonable opportunity to inspect or copy the public record.

13 “(2) If a person makes a written request to inspect a public record or to receive a copy of a
14 public record, the public body receiving the request shall respond [*as soon as practicable and without*
15 *unreasonable delay*] **within five business days of receipt of the request by a person identified**
16 **by the public body in subsection (8)(a) of this section.** The public body may request additional
17 information or clarification from the requester for the purpose of expediting the public body’s re-
18 sponse to the request. The response of the public body **must be in a standard form**, must ac-
19 knowledge receipt of the request and must include one of the following:

20 “(a) A statement that the public body does not possess, or is not the custodian of, the public
21 record.

22 “(b) Copies of all requested public records for which the public body does not claim an ex-
23 emption from disclosure under ORS 192.410 to 192.505.

24 “(c) A statement that the public body is the custodian of at least some of the requested public
25 records, an estimate of the time the public body requires before the public records may be inspected
26 or copies of the records will be provided and an estimate of the fees that the requester must pay
27 under subsection [(4)] (5) of this section as a condition of receiving the public records.

28 “(d) A statement that the public body is the custodian of at least some of the requested public
29 records and that an estimate of the time and fees for disclosure of the public records will be pro-
30 vided by the public body within a reasonable time.

31 “(e) A statement that the public body is uncertain whether the public body possesses the public
32 record and that the public body will search for the record and make an appropriate response as soon
33 as practicable.

34 “(f) A statement that state or federal law prohibits the public body from acknowledging whether
35 the record exists or that acknowledging whether the record exists would result in the loss of federal

1 benefits or other sanction. A statement under this paragraph must include a citation to the state
2 or federal law relied upon by the public body.

3 **“(3) A public body must within 30 days of receipt of the request by a person identified
4 by the public body under subsection (8)(a) of this section:**

5 **“(a) Produce all requested public records within the possession or custody of the public
6 body;**

7 **“(b) Claim an exemption from disclosure under ORS 192.410 to 192.505 with respect to
8 requested records and explain with specificity the reason the exemption applies to the re-
9 quested records; or**

10 **“(c) State that the public body is still gathering the requested records and provide an
11 estimated date when the requested records will be ready for inspection or delivery to the
12 requester, or when the public body will be able to claim an exemption from disclosure of the
13 requested records.**

14 **“[(3)] (4) If the public record is maintained in a machine readable or electronic form, the
15 custodian shall provide a copy of the public record in the form requested, if available. If the public
16 record is not available in the form requested, the custodian shall make the public record available
17 in the form in which the custodian maintains the public record.**

18 **“[(4)(a)] (5)(a) The public body may establish fees reasonably calculated to reimburse the public
19 body for the public body’s actual cost of making public records available, including costs for sum-
20 marizing, compiling or tailoring the public records, either in organization or media, to meet the
21 person’s request.**

22 **“(b) The public body may include in a fee established under paragraph (a) of this subsection the
23 cost of time spent by an attorney for the public body in reviewing the public records, redacting
24 material from the public records or segregating the public records into exempt and nonexempt re-
25 cords. The public body may not include in a fee established under paragraph (a) of this subsection
26 the cost of time spent by an attorney for the public body in determining the application of the pro-
27 visions of ORS 192.410 to 192.505.**

28 **“(c) The public body may not establish a fee greater than \$25 under this section unless the
29 public body first provides the requestor with a written notification of the estimated amount of the
30 fee and the requestor confirms that the requestor wants the public body to proceed with making the
31 public record available. Any period of time after the public body has supplied a written esti-
32 mate to a requester and before the requester confirms the requester’s interest in proceeding
33 with the request is not taken into account in determining the public body’s compliance with
34 deadlines established under subsection (3) of this section.**

35 **“(d) Notwithstanding paragraphs (a) to (c) of this subsection, when the public records are those
36 filed with the Secretary of State under ORS chapter 79 or ORS 80.100 to 80.130, the fees for fur-
37 nishing copies, summaries or compilations of the public records are those established by the Secre-
38 tary of State by rule, under ORS chapter 79 or ORS 80.100 to 80.130.**

39 **“[(5)] (6) The custodian of any public record may furnish copies without charge or at a sub-
40 stantially reduced fee if the custodian determines that the waiver or reduction of fees is in the
41 public interest because making the record available primarily benefits the general public.**

42 **“[(6)] (7) A person who believes that there has been an unreasonable denial of a fee waiver or
43 fee reduction may petition the Attorney General or the district attorney in the same manner as a
44 person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The
45 Attorney General, the district attorney and the court have the same authority in instances when a**

1 fee waiver or reduction is denied as it has when inspection of a public record is denied.

2 “[7] (8) A public body shall make available to the public a written procedure for making public
3 record requests that includes:

4 “(a) The name of one or more persons to whom public record requests may be sent, with ad-
5 dresses; and

6 “(b) The amounts of and the manner of calculating fees that the public body charges for re-
7 sponding to requests for public records.

8 “[8] (9) This section does not apply to signatures of individuals submitted under ORS chapter
9 247 for purposes of registering to vote as provided in ORS 247.973.

10 “(10)(a) **The time periods established in subsections (2) and (3) of this section:**

11 “(A) **In the case of a community college district, community college service district or
12 public university in this state, do not apply for periods that students of a school of the re-
13 spective district or university are not attending class;**

14 “(B) **In the case of a school district or education service district, do not begin during
15 periods that a majority of students of the district are on break for five or more consecutive
16 days; and**

17 “(C) **Do not apply to any public body that does not have at least one full-time equivalent
18 employee who reports to work during the week the request is received or during the week
19 following the week the request is received.**

20 “(b) **A public body that is not subject to the time periods established in subsections (2)
21 and (3) of this section because of the provisions of paragraph (a) of this subsection must still,
22 as soon as is practicable and without unreasonable delay, acknowledge receipt of the request
23 and provide the requester with copies of the requested records, an opportunity to inspect
24 requested records or an explanation for why the requested records will not be made available
25 to the requester.**

26 “**SECTION 2.** ORS 192.450 is amended to read:

27 “192.450. (1) Subject to ORS 192.480 and subsection (4) of this section, any person denied the
28 right to inspect or to receive a copy of any public record of a state agency, **or who has not re-
29 ceived copies of requested records or an opportunity to inspect requested records by the date
30 prescribed in ORS 192.440 (3),** may petition the Attorney General to review the public record to
31 determine if it may be withheld from public inspection **or to determine if the agency is being
32 unreasonably slow in responding to the request.** Except as provided in subsection (5) of this
33 section, the burden is on the agency to sustain its action. Except as provided in subsection (5) of
34 this section, the Attorney General shall issue an order denying or granting the petition, or denying
35 it in part and granting it in part, within seven days from the day the Attorney General receives the
36 petition.

37 “(2) If the Attorney General grants the petition and orders the state agency to disclose the re-
38 cord, or if the Attorney General grants the petition in part and orders the state agency to disclose
39 a portion of the record, the state agency shall comply with the order in full within seven days after
40 issuance of the order, unless within the seven-day period it issues a notice of its intention to insti-
41 tute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County or, as
42 provided in subsection (6) of this section, in the circuit court of the county where the record is held.
43 Copies of the notice shall be sent to the Attorney General and by certified mail to the petitioner
44 at the address shown on the petition. The state agency shall institute the proceedings within seven
45 days after it issues its notice of intention to do so. If the Attorney General denies the petition in

1 whole or in part, or if the state agency continues to withhold the record or a part of it
2 notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may
3 institute such proceedings.

4 “(3) The Attorney General shall serve as counsel for the state agency in a suit filed under sub-
5 section (2) of this section if the suit arises out of a determination by the Attorney General that the
6 public record should not be disclosed, or that a part of the public record should not be disclosed if
7 the state agency has fully complied with the order of the Attorney General requiring disclosure of
8 another part or parts of the public record, and in no other case. In any case in which the Attorney
9 General is prohibited from serving as counsel for the state agency, the agency may retain special
10 counsel.

11 “(4) A person denied the right to inspect or to receive a copy of any public record of a health
12 professional regulatory board, as defined in ORS 676.160, that contains information concerning a
13 licensee or applicant, and petitioning the Attorney General to review the public record shall, on or
14 before the date of filing the petition with the Attorney General, send a copy of the petition by first
15 class mail to the health professional regulatory board. Not more than 48 hours after the board re-
16 ceives a copy of the petition, the board shall send a copy of the petition by first class mail to the
17 licensee or applicant who is the subject of any record for which disclosure is sought. When sending
18 a copy of the petition to the licensee or applicant, the board shall include a notice informing the
19 licensee or applicant that a written response by the licensee or applicant may be filed with the At-
20 torney General not later than seven days after the date that the notice was sent by the board. Im-
21 mediately upon receipt of any written response from the licensee or applicant, the Attorney General
22 shall send a copy of the response to the petitioner by first class mail.

23 “(5) The person seeking disclosure of a public record of a health professional regulatory board,
24 as defined in ORS 676.160, that is confidential or exempt from disclosure under ORS 676.165 or
25 676.175, shall have the burden of demonstrating to the Attorney General by clear and convincing
26 evidence that the public interest in disclosure outweighs other interests in nondisclosure, including
27 but not limited to the public interest in nondisclosure. The Attorney General shall issue an order
28 denying or granting the petition, or denying or granting it in part, not later than the 15th day fol-
29 lowing the day that the Attorney General receives the petition. A copy of the Attorney General’s
30 order granting a petition or part of a petition shall be served by first class mail on the health pro-
31 fessional regulatory board, the petitioner and the licensee or applicant who is the subject of any
32 record ordered to be disclosed. The health professional regulatory board shall not disclose any re-
33 cord prior to the seventh day following the service of the Attorney General’s order on a licensee
34 or applicant entitled to receive notice under this subsection.

35 “(6) If the Attorney General grants or denies the petition for a record of a health professional
36 regulatory board, as defined in ORS 676.160, that contains information concerning a licensee or ap-
37 plicant, the board, a person denied the right to inspect or receive a copy of the record or the
38 licensee or applicant who is the subject of the record may institute proceedings for injunctive or
39 declaratory relief in the circuit court for the county where the public record is held. The party
40 seeking disclosure of the record shall have the burden of demonstrating by clear and convincing
41 evidence that the public interest in disclosure outweighs other interests in nondisclosure, including
42 but not limited to the public interest in nondisclosure.

43 “(7) The Attorney General may comply with a request of a health professional regulatory board
44 to be represented by independent counsel in any proceeding under subsection (6) of this section.

45 “**SECTION 3.** ORS 192.460 is amended to read:

1 “192.460. (1) ORS 192.450 applies to the case of a person denied the right to inspect or to receive
2 a copy of any public record of a public body other than a state agency **or when a public body is**
3 **being unreasonably slow in responding to the request**, except that:

4 “(a) The district attorney of the county in which the public body is located, or if it is located
5 in more than one county the district attorney of the county in which the administrative offices of
6 the public body are located, shall carry out the functions of the Attorney General;

7 “(b) Any suit filed must be filed in the circuit court for the county described in paragraph (a)
8 of this subsection; and

9 “(c) The district attorney may not serve as counsel for the public body, in the cases permitted
10 under ORS 192.450 (3), unless the district attorney ordinarily serves as counsel for the public body.

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

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

15 “**SECTION 4.** ORS 192.465 is amended to read:

16 “192.465. (1) The failure of the Attorney General or district attorney to issue an order under
17 ORS 192.450 or 192.460 denying, granting, or denying in part and granting in part, a petition to re-
18 quire disclosure within seven days from the day of receipt of the petition shall be treated as an or-
19 der denying the petition for the purpose of determining whether a person may institute proceedings
20 for injunctive or declaratory relief under ORS 192.450 or 192.460.

21 “(2) The failure of an elected official to [*deny, grant, or deny in part and grant in part a request*
22 *to inspect or receive a copy of a public record within seven days from the day of receipt of the*
23 *request*] **issue a response described in ORS 192.440 (2) by the date prescribed in ORS 192.440**
24 **(2)** shall be treated as a denial of the request for the purpose of determining whether a person may
25 institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.

26 “**(3) The failure of an elected official to provide a requester with copies of requested re-**
27 **ords or an opportunity to inspect requested records by the date prescribed in ORS 192.440**
28 **(3) shall be treated as a denial of the request for the purpose of determining whether a per-**
29 **son may institute proceedings for injunctive or declaratory relief under ORS 192.450 or**
30 **192.460.**

31 “(4) Subsections (2) and (3) of this section do not apply to a request to inspect or receive
32 a copy of court records that is submitted to a judge.

33
34 “NOTICE OF LOCAL INITIATIVES
35

36 “**SECTION 5.** Section 6 of this 2016 Act is added to and made a part of ORS chapter 250.

37 “**SECTION 6.** (1) Upon receiving a prospective petition for an initiative measure:

38 “(a) Under ORS 250.165, the county clerk shall provide notice to the Secretary of State
39 of the prospective petition for an initiative measure.

40 “(b) Under ORS 250.265, the city elections officer shall provide notice to the Secretary
41 of State of the prospective petition for an initiative measure.

42 “(2) Upon receipt of notice of a prospective petition for an initiative measure under sub-
43 section (1) of this section, the Secretary of State shall provide reasonable statewide notice
44 of the prospective petition for an initiative measure.

45 “(3) Upon determining whether a prospective petition for an initiative measure:

1 but need not be limited to:

2 “(a) Providing reasonable assurance of the identity of the requester;

3 “(b) Providing reasonable assurance of the uses to which the personal information will be put,
4 if applicable;

5 “(c) Showing that the individual whose personal information is to be disclosed has given per-
6 mission for the disclosure, if permission is required; and

7 “(d) Submitting a written request for the personal information in a form prescribed by the de-
8 partment.

9

10

“CAPTIONS

11

12 “**SECTION 10. The unit captions used in this 2016 Act are provided only for the conven-
13 ience of the reader and do not become part of the statutory law of this state or express any
14 legislative intent in the enactment of this 2016 Act.”.**

15
