

House Bill 4130

Sponsored by Representative HOYLE (Pre-session filed.)

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**.

Requires state agency public records policies, and public record retention schedules of state agencies and political subdivisions of this state, to require retention of public records for a minimum of two years.

Requires public bodies to provide standardized acknowledgment of receipt of requests for public records within five business days of receipt of request. Requires public bodies to provide records, or to assert exemption from required disclosure, within 30 days of receipt of request. Permits public body to exceed 30-day deadline if public body provides requester with estimated time that records will be disclosed or exemptions claimed. Permits requesters to petition for administrative or judicial review if public body fails to meet 30-day deadline.

Limits amounts public bodies with 10 or more full-time equivalent employees may charge as fees for producing public records.

Directs county clerks and city elections officers to give notice to Secretary of State regarding petitions for county or local initiative measures, and requires secretary to provide reasonable statewide notice of county or local initiative measures.

Appropriates moneys from General Fund to Secretary of State to implement statewide notice of county or local initiative measures.

Declares emergency, effective on passage.

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A BILL FOR AN ACT

Relating to transparency in governmental decision-making; creating new provisions; amending ORS 147.421, 171.427, 192.018, 192.105, 192.440, 192.450, 192.460, 192.465 and 802.183; and declaring an emergency.

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

PUBLIC RECORDS RETENTION

SECTION 1. ORS 192.018 is amended to read:

192.018. (1) Each state agency shall have a written policy that sets forth the agency's use, retention and ownership of public records. The policy shall ensure that public records are being maintained and managed consistently within the agency from the time of creation of a public record to the time of final disposition of the public record.

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

(3) A written policy or amendment of the policy must provide for a retention period for a public record that is at least two years in duration from the time the record is created or comes into the possession of a custodian, as defined in ORS 192.410, until the record may be destroyed.

SECTION 2. ORS 192.105 is amended to read:

192.105. (1)(a) Except as otherwise provided by law, the State Archivist may grant to public of-

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 officials of the state or any political subdivision specific or continuing authorization for the retention
 2 or disposition of public records that are in their custody, after the records have been in existence
 3 for a specified period of time. In granting such authorization, the State Archivist shall consider the
 4 value of the public records for legal, administrative or research purposes and shall establish rules
 5 for procedure for the retention or disposition of the public records.

6 **(b) The State Archivist may not grant authorization under this section for the de-**
 7 **struction of a public record that has not been retained for a period of at least two years by**
 8 **the public official who has the public record in custody.**

9 (2)(a) The State Archivist shall provide instructions and forms for obtaining authorization. Upon
 10 receipt of an authorization or upon the effective date of the applicable rule, a state official who has
 11 public records in custody shall destroy or otherwise dispose of those records that are older than the
 12 specified period of retention established by the authorization or rule. An official of a local govern-
 13 ment may destroy such records if such destruction is consistent with the policy of the local gov-
 14 ernment. No record of accounts or financial affairs subject to audit shall be destroyed until released
 15 for destruction by the responsible auditor or representative of the auditor. If federal funds are in-
 16 volved, records retention requirements of the United States Government must be observed. Each
 17 state agency and political subdivision shall designate a records officer to coordinate its records
 18 management program and to serve as liaison with the State Archivist. The county records officers
 19 for the purposes of ORS 192.001, 192.050, 192.060, 192.105, 192.130, 357.825, 357.835 and 357.875 shall
 20 be those officers identified in ORS 205.110. The State Archivist shall require periodic reports from
 21 records officers about records management programs. The State Archivist may require state agency
 22 records designated as inactive by the State Archivist to be transferred to the State Records Center,
 23 pending the availability of space.

24 (b) The State Archivist shall determine which parts of a public record are acceptable for ad-
 25 mission to the State Records Center and may require the state agency or governing body to cause
 26 the unacceptable part to be removed before the record is submitted to the State Records Center.

27 (3) Authorizations granted prior to January 1, 1978, by any state agency, the State Archivist,
 28 or any board of county commissioners, to state agencies, schools, school districts, soil and water
 29 conservation districts, or county officials and offices shall remain in effect until they are adopted
 30 or amended by the State Archivist.

31 (4) This section does not apply to legislative records, as defined in ORS 171.410.

32 **SECTION 3.** ORS 171.427 is amended to read:

33 171.427. The Legislative Administration Committee and State Archivist shall establish and from
 34 time to time may revise a schedule that shall govern the retention and destruction or other dispo-
 35 sition of legislative records delivered to and in the custody of the archivist under ORS 171.420 or
 36 171.430 and of sound recordings retained by a committee under ORS 171.430 (2). The schedule agreed
 37 upon by the committee and archivist shall:

38 (1) Be set forth in the rules and regulations issued by the archivist[.]; **and**

39 (2) **Require legislative records to be retained for a period of at least two years.**

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 41 **PUBLIC RECORDS PRODUCTION**

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 43 **SECTION 4.** ORS 192.440 is amended to read:

44 192.440. (1) The custodian of any public record that a person has a right to inspect shall give
 45 the person, upon request:

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

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

3 (2) If a person makes a written request to inspect a public record or to receive a copy of a
 4 public record, the public body receiving the request shall respond [*as soon as practicable and without*
 5 *unreasonable delay*] **within five business days of receipt of the request.** The public body may re-
 6 quest additional information or clarification from the requester for the purpose of expediting the
 7 public body's response to the request. The response of the public body **must be in a standard form,**
 8 must acknowledge receipt of the request and must include one of the following:

9 (a) A statement that the public body does not possess, or is not the custodian of, the public re-
 10 cord.

11 (b) Copies of all requested public records for which the public body does not claim an exemption
 12 from disclosure under ORS 192.410 to 192.505.

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

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

20 (e) A statement that the public body is uncertain whether the public body possesses the public
 21 record and that the public body will search for the record and make an appropriate response as soon
 22 as practicable.

23 (f) A statement that state or federal law prohibits the public body from acknowledging whether
 24 the record exists or that acknowledging whether the record exists would result in the loss of federal
 25 benefits or other sanction. A statement under this paragraph must include a citation to the state
 26 or federal law relied upon by the public body.

27 **(3) A public body must within 30 days of receipt of the request:**

28 (a) **Produce all requested public records within the possession or custody of the public**
 29 **body;**

30 (b) **Claim an exemption from disclosure under ORS 192.410 to 192.505 with respect to re-**
 31 **quested records and explain with specificity the reason the exemption applies to the re-**
 32 **quested records; or**

33 (c) **State that the public body is still gathering the requested records and provide an es-**
 34 **timated date when the requested records will be ready for inspection or delivery to the re-**
 35 **quester, or when the public body will be able to claim an exemption from disclosure of the**
 36 **requested records.**

37 [(3)] (4) If the public record is maintained in a machine readable or electronic form, the custo-
 38 dian shall provide a copy of the public record in the form requested, if available. If the public record
 39 is not available in the form requested, the custodian shall make the public record available in the
 40 form in which the custodian maintains the public record.

41 [(4)(a)] (5)(a) The public body may establish fees reasonably calculated to reimburse the public
 42 body for the public body's actual cost of making public records available, including costs for sum-
 43 marizing, compiling or tailoring the public records, either in organization or media, to meet the
 44 person's request.

45 (b) The public body may include in a fee established under paragraph (a) of this subsection the

1 cost of time spent by an attorney for the public body in reviewing the public records, redacting
 2 material from the public records or segregating the public records into exempt and nonexempt re-
 3 cords. The public body may not include in a fee established under paragraph (a) of this subsection
 4 the cost of time spent by an attorney for the public body in determining the application of the pro-
 5 visions of ORS 192.410 to 192.505.

6 **(c) Notwithstanding paragraph (a) or (b) of this subsection, a public body with 10 or more**
 7 **full-time equivalent employees may not establish fees under this subsection in which a com-**
 8 **ponent of the fee is the time of staff engaged in responding to the request that is calculated**
 9 **at more than \$30 per hour.**

10 [(c)] **(d)** The public body may not establish a fee greater than \$25 under this section unless the
 11 public body first provides the requestor with a written notification of the estimated amount of the
 12 fee and the requestor confirms that the requestor wants the public body to proceed with making the
 13 public record available. **Any period of time after the public body has supplied a written esti-**
 14 **mate to a requester and before the requester confirms the requester's interest in proceeding**
 15 **with the request is not taken into account in determining the public body's compliance with**
 16 **deadlines established under subsection (3) of this section.**

17 [(d)] **(e)** Notwithstanding paragraphs (a) to [(c)] **(d)** of this subsection, when the public records
 18 are those filed with the Secretary of State under ORS chapter 79 or ORS 80.100 to 80.130, the fees
 19 for furnishing copies, summaries or compilations of the public records are those established by the
 20 Secretary of State by rule, under ORS chapter 79 or ORS 80.100 to 80.130.

21 [(5)] **(6)** The custodian of any public record may furnish copies without charge or at a substan-
 22 tially reduced fee if the custodian determines that the waiver or reduction of fees is in the public
 23 interest because making the record available primarily benefits the general public.

24 [(6)] **(7)** A person who believes that there has been an unreasonable denial of a fee waiver or
 25 fee reduction may petition the Attorney General or the district attorney in the same manner as a
 26 person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The
 27 Attorney General, the district attorney and the court have the same authority in instances when a
 28 fee waiver or reduction is denied as it has when inspection of a public record is denied.

29 [(7)] **(8)** A public body shall make available to the public a written procedure for making public
 30 record requests that includes:

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

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

35 [(8)] **(9)** This section does not apply to signatures of individuals submitted under ORS chapter
 36 247 for purposes of registering to vote as provided in ORS 247.973.

37 **SECTION 5.** ORS 192.450 is amended to read:

38 192.450. (1) Subject to ORS 192.480 and subsection (4) of this section, any person denied the right
 39 to inspect or to receive a copy of any public record of a state agency, **or who has not received**
 40 **copies of the requested records or an opportunity to inspect the requested records within 30**
 41 **days of the request**, may petition the Attorney General to review the public record to determine
 42 if it may be withheld from public inspection **or to determine if the agency is being unreasonably**
 43 **slow in responding to the request.** Except as provided in subsection (5) of this section, the burden
 44 is on the agency to sustain its action. Except as provided in subsection (5) of this section, the At-
 45 torney General shall issue an order denying or granting the petition, or denying it in part and

1 granting it in part, within seven days from the day the Attorney General receives the petition.

2 (2) If the Attorney General grants the petition and orders the state agency to disclose the re-
3 cord, or if the Attorney General grants the petition in part and orders the state agency to disclose
4 a portion of the record, the state agency shall comply with the order in full within seven days after
5 issuance of the order, unless within the seven-day period it issues a notice of its intention to insti-
6 tute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County or, as
7 provided in subsection (6) of this section, in the circuit court of the county where the record is held.
8 Copies of the notice shall be sent to the Attorney General and by certified mail to the petitioner
9 at the address shown on the petition. The state agency shall institute the proceedings within seven
10 days after it issues its notice of intention to do so. If the Attorney General denies the petition in
11 whole or in part, or if the state agency continues to withhold the record or a part of it
12 notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may
13 institute such proceedings.

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

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

33 (5) The person seeking disclosure of a public record of a health professional regulatory board,
34 as defined in ORS 676.160, that is confidential or exempt from disclosure under ORS 676.165 or
35 676.175, shall have the burden of demonstrating to the Attorney General by clear and convincing
36 evidence that the public interest in disclosure outweighs other interests in nondisclosure, including
37 but not limited to the public interest in nondisclosure. The Attorney General shall issue an order
38 denying or granting the petition, or denying or granting it in part, not later than the 15th day fol-
39 lowing the day that the Attorney General receives the petition. A copy of the Attorney General's
40 order granting a petition or part of a petition shall be served by first class mail on the health pro-
41 fessional regulatory board, the petitioner and the licensee or applicant who is the subject of any
42 record ordered to be disclosed. The health professional regulatory board shall not disclose any re-
43 cord prior to the seventh day following the service of the Attorney General's order on a licensee
44 or applicant entitled to receive notice under this subsection.

45 (6) If the Attorney General grants or denies the petition for a record of a health professional

1 regulatory board, as defined in ORS 676.160, that contains information concerning a licensee or ap-
 2 plicant, the board, a person denied the right to inspect or receive a copy of the record or the
 3 licensee or applicant who is the subject of the record may institute proceedings for injunctive or
 4 declaratory relief in the circuit court for the county where the public record is held. The party
 5 seeking disclosure of the record shall have the burden of demonstrating by clear and convincing
 6 evidence that the public interest in disclosure outweighs other interests in nondisclosure, including
 7 but not limited to the public interest in nondisclosure.

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

10 **SECTION 6.** ORS 192.460 is amended to read:

11 192.460. (1) ORS 192.450 applies to the case of a person denied the right to inspect or to receive
 12 a copy of any public record of a public body other than a state agency **or when a public body is**
 13 **being unreasonably slow in responding to the request**, except that:

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

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

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

21 (2) Disclosure of a record to the district attorney in compliance with subsection (1) of this sec-
 22 tion does not waive any privilege or claim of privilege regarding the record or its contents.

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

25 **SECTION 7.** ORS 192.465 is amended to read:

26 192.465. (1) The failure of the Attorney General or district attorney to issue an order under ORS
 27 192.450 or 192.460 denying, granting, or denying in part and granting in part, a petition to require
 28 disclosure within seven days from the day of receipt of the petition shall be treated as an order
 29 denying the petition for the purpose of determining whether a person may institute proceedings for
 30 injunctive or declaratory relief under ORS 192.450 or 192.460.

31 (2) The failure of an elected official to [*deny, grant, or deny in part and grant in part a request*
 32 *to inspect or receive a copy of a public record within seven*] **issue a response described in ORS**
 33 **192.440 (2) within five business** days from the day of receipt of the request shall be treated as a
 34 denial of the request for the purpose of determining whether a person may institute proceedings for
 35 injunctive or declaratory relief under ORS 192.450 or 192.460.

36 (3) **The failure of an elected official to provide a requester with copies of requested re-**
 37 **records, or an opportunity to inspect requested records, within 30 days of receipt of the request**
 38 **shall be treated as a denial of the request for the purpose of determining whether a person**
 39 **may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.**

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 41 **NOTICE OF LOCAL INITIATIVES**

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 43 **SECTION 8.** Section 9 of this 2016 Act is added to and made a part of ORS chapter 250.

44 **SECTION 9.** (1) Upon receiving a prospective petition for an initiative measure:

45 (a) Under ORS 250.165, the county clerk shall provide notice to the Secretary of State of

1 the prospective petition for an initiative measure.

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

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

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

8 (a) Meets the requirements of Article IV, section 1 (2)(d), and Article VI, section 10, of
9 the Oregon Constitution, the county clerk shall provide notice to the Secretary of State of
10 the clerk’s determination.

11 (b) Meets the requirements of Article IV, section 1 (2)(d) and (5), of the Oregon Consti-
12 tution, the city elections officer shall provide notice to the Secretary of State of the elections
13 officer’s determination.

14 (4) The Secretary of State shall provide reasonable statewide notice of determinations
15 made under subsection (3) of this section.

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17 **APPROPRIATION**

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19 **SECTION 10.** In addition to and not in lieu of any other appropriation, there is appro-
20 priated to the Secretary of State, for the biennium ending June 30, 2017, out of the General
21 Fund, the amount of \$_____ for the purpose of implementing the provisions of section 9
22 of this 2016 Act.

23
24 **CONFORMING AMENDMENTS**

25
26 **SECTION 11.** ORS 147.421 is amended to read:

27 147.421. (1) If a public body is the custodian of any of the following information, upon the re-
28 quest of the victim, the public body shall provide to the victim any of the following information of
29 which it is the custodian and that is about the defendant or convicted criminal:

- 30 (a) The conviction and sentence;
- 31 (b) Criminal history;
- 32 (c) Imprisonment; and
- 33 (d) Future release from physical custody.

34 (2) A public body, in its discretion, may provide the requested information by furnishing the
35 victim with copies of public records. The public body may charge the victim its actual cost for
36 making public records available as provided in ORS 192.440 [(4)] (5).

37 (3) As used in this section:

38 (a) “Criminal history” means a description of the prior arrests, convictions and sentences of the
39 person.

40 (b) “Future release” means the projected or scheduled date of release of the person from con-
41 finement, the name and location of the correctional facility from which the person is to be released
42 and the community where the person is scheduled to reside upon release.

43 (c) “Imprisonment” means the name and location of the correctional facility in which the person
44 is confined.

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

