

HB 4130-10
(LC 191)
2/16/16 (DJ/ps)

Requested by Representative HOYLE

**PROPOSED AMENDMENTS TO
HOUSE BILL 4130**

- 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
3 an” and insert a period.
- 4 Delete line 4.
- 5 Delete lines 6 through 22 and delete pages 2 through 8 and insert:

6
7 **“PUBLIC RECORDS PRODUCTION**

8
9 **“SECTION 1.** ORS 192.440 is amended to read:

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

12 “(a) A copy of the public record if the public record is of a nature per-
13 mitting copying; or

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

15 “(2) If a person makes a written request to inspect a public record or to
16 receive a copy of a public record, the public body receiving the request shall
17 respond [*as soon as practicable and without unreasonable delay*] **within five**
18 **business days of receipt of the request by a person identified by the**
19 **public body in subsection (8)(a) of this section.** The public body may re-
20 quest additional information or clarification from the requester for the pur-
21 pose of expediting the public body’s response to the request. The response

1 of the public body **must be in a standard form**, must acknowledge receipt
2 of the request and must include one of the following:

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

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

7 “(c) A statement that the public body is the custodian of at least some
8 of the requested public records, an estimate of the time the public body re-
9 quires before the public records may be inspected or copies of the records
10 will be provided and an estimate of the fees that the requester must pay
11 under subsection [(4)] (5) of this section as a condition of receiving the
12 public records.

13 “(d) A statement that the public body is the custodian of at least some
14 of the requested public records and that an estimate of the time and fees for
15 disclosure of the public records will be provided by the public body within
16 a reasonable time.

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

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

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

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

30 “(b) **Claim an exemption from disclosure under ORS 192.410 to**

1 **192.505 with respect to requested records and explain with specificity**
2 **the reason the exemption applies to the requested records; or**

3 **“(c) State that the public body is still gathering the requested re-**
4 **ords and provide an estimated date when the requested records will**
5 **be ready for inspection or delivery to the requester, or when the public**
6 **body will be able to claim an exemption from disclosure of the re-**
7 **quested records.**

8 “[3] (4) If the public record is maintained in a machine readable or
9 electronic form, the custodian shall provide a copy of the public record in
10 the form requested, if available. If the public record is not available in the
11 form requested, the custodian shall make the public record available in the
12 form in which the custodian maintains the public record.

13 “[4(a)] (5)(a) The public body may establish fees reasonably calculated
14 to reimburse the public body for the public body’s actual cost of making
15 public records available, including costs for summarizing, compiling or tai-
16 loring the public records, either in organization or media, to meet the
17 person’s request.

18 “(b) The public body may include in a fee established under paragraph (a)
19 of this subsection the cost of time spent by an attorney for the public body
20 in reviewing the public records, redacting material from the public records
21 or segregating the public records into exempt and nonexempt records. The
22 public body may not include in a fee established under paragraph (a) of this
23 subsection the cost of time spent by an attorney for the public body in de-
24 termining the application of the provisions of ORS 192.410 to 192.505.

25 “(c) The public body may not establish a fee greater than \$25 under this
26 section unless the public body first provides the requestor with a written
27 notification of the estimated amount of the fee and the requestor confirms
28 that the requestor wants the public body to proceed with making the public
29 record available. **Any period of time after the public body has supplied**
30 **a written estimate to a requester and before the requester confirms**

1 **the requester’s interest in proceeding with the request is not taken**
2 **into account in determining the public body’s compliance with dead-**
3 **lines established under subsection (3) of this section.**

4 “(d) Notwithstanding paragraphs (a) to (c) of this subsection, when the
5 public records are those filed with the Secretary of State under ORS chapter
6 79 or ORS 80.100 to 80.130, the fees for furnishing copies, summaries or
7 compilations of the public records are those established by the Secretary of
8 State by rule, under ORS chapter 79 or ORS 80.100 to 80.130.

9 “[5] (6) The custodian of any public record may furnish copies without
10 charge or at a substantially reduced fee if the custodian determines that the
11 waiver or reduction of fees is in the public interest because making the re-
12 cord available primarily benefits the general public.

13 “[6] (7) A person who believes that there has been an unreasonable de-
14 nial of a fee waiver or fee reduction may petition the Attorney General or
15 the district attorney in the same manner as a person petitions when in-
16 spection of a public record is denied under ORS 192.410 to 192.505. The At-
17 torney General, the district attorney and the court have the same authority
18 in instances when a fee waiver or reduction is denied as it has when in-
19 spection of a public record is denied.

20 “[7] (8) A public body shall make available to the public a written pro-
21 cedure for making public record requests that includes:

22 “(a) The name of one or more persons to whom public record requests
23 may be sent, with addresses; and

24 “(b) The amounts of and the manner of calculating fees that the public
25 body charges for responding to requests for public records.

26 “[8] (9) This section does not apply to signatures of individuals submit-
27 ted under ORS chapter 247 for purposes of registering to vote as provided in
28 ORS 247.973.

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

1 “(A) In the case of a community college district, community college
2 service district or public university in this state, do not apply for pe-
3 riods that students of a school of the respective district or university
4 are not attending class;

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

8 “(C) Do not apply to any public body that does not have at least one
9 full-time equivalent employee who reports to work during the week
10 the request is received or during the week following the week the re-
11 quest is received.

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

19 “SECTION 2. ORS 192.450 is amended to read:

20 “192.450. (1) Subject to ORS 192.480 and subsection (4) of this section, any
21 person denied the right to inspect or to receive a copy of any public record
22 of a state agency, **or who has not received copies of requested records**
23 **or an opportunity to inspect requested records by the date prescribed**
24 **in ORS 192.440 (3),** may petition the Attorney General to review the public
25 record to determine if it may be withheld from public inspection **or to de-**
26 **termine if the agency is being unreasonably slow in responding to the**
27 **request.** Except as provided in subsection (5) of this section, the burden is
28 on the agency to sustain its action. Except as provided in subsection (5) of
29 this section, the Attorney General shall issue an order denying or granting
30 the petition, or denying it in part and granting it in part, within seven days

1 from the day the Attorney General receives the petition.

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

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

26 “(4) A person denied the right to inspect or to receive a copy of any
27 public record of a health professional regulatory board, as defined in ORS
28 676.160, that contains information concerning a licensee or applicant, and
29 petitioning the Attorney General to review the public record shall, on or
30 before the date of filing the petition with the Attorney General, send a copy

1 of the petition by first class mail to the health professional regulatory board.
2 Not more than 48 hours after the board receives a copy of the petition, the
3 board shall send a copy of the petition by first class mail to the licensee or
4 applicant who is the subject of any record for which disclosure is sought.
5 When sending a copy of the petition to the licensee or applicant, the board
6 shall include a notice informing the licensee or applicant that a written re-
7 sponse by the licensee or applicant may be filed with the Attorney General
8 not later than seven days after the date that the notice was sent by the
9 board. Immediately upon receipt of any written response from the licensee
10 or applicant, the Attorney General shall send a copy of the response to the
11 petitioner by first class mail.

12 “(5) The person seeking disclosure of a public record of a health profes-
13 sional regulatory board, as defined in ORS 676.160, that is confidential or
14 exempt from disclosure under ORS 676.165 or 676.175, shall have the burden
15 of demonstrating to the Attorney General by clear and convincing evidence
16 that the public interest in disclosure outweighs other interests in
17 nondisclosure, including but not limited to the public interest in
18 nondisclosure. The Attorney General shall issue an order denying or grant-
19 ing the petition, or denying or granting it in part, not later than the 15th
20 day following the day that the Attorney General receives the petition. A
21 copy of the Attorney General’s order granting a petition or part of a petition
22 shall be served by first class mail on the health professional regulatory
23 board, the petitioner and the licensee or applicant who is the subject of any
24 record ordered to be disclosed. The health professional regulatory board shall
25 not disclose any record prior to the seventh day following the service of the
26 Attorney General’s order on a licensee or applicant entitled to receive notice
27 under this subsection.

28 “(6) If the Attorney General grants or denies the petition for a record of
29 a health professional regulatory board, as defined in ORS 676.160, that con-
30 tains information concerning a licensee or applicant, the board, a person

1 denied the right to inspect or receive a copy of the record or the licensee
2 or applicant who is the subject of the record may institute proceedings for
3 injunctive or declaratory relief in the circuit court for the county where the
4 public record is held. The party seeking disclosure of the record shall have
5 the burden of demonstrating by clear and convincing evidence that the public
6 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 profes-
9 sional regulatory board to be represented by independent counsel in any
10 proceeding under subsection (6) of this section.

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

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

16 “(a) The district attorney of the county in which the public body is lo-
17 cated, or if it is located in more than one county the district attorney of the
18 county in which the administrative offices of the public body are located,
19 shall carry out the functions of the Attorney General;

20 “(b) Any suit filed must be filed in the circuit court for the county de-
21 scribed in paragraph (a) of this subsection; and

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

25 “(2) Disclosure of a record to the district attorney in compliance with
26 subsection (1) of this section does not waive any privilege or claim of privi-
27 lege regarding the record or its contents.

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

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

1 “192.465. (1) The failure of the Attorney General or district attorney to
2 issue an order under ORS 192.450 or 192.460 denying, granting, or denying
3 in part and granting in part, a petition to require disclosure within seven
4 days from the day of receipt of the petition shall be treated as an order de-
5 nyng the petition for the purpose of determining whether a person may in-
6 stitute proceedings for injunctive or declaratory relief under ORS 192.450 or
7 192.460.

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

15 “(3) **The failure of an elected official to provide a requester with**
16 **copies of requested records or an opportunity to inspect requested re-**
17 **ords by the date prescribed in ORS 192.440 (3) shall be treated as a**
18 **denial of the request for the purpose of determining whether a person**
19 **may institute proceedings for injunctive or declaratory relief under**
20 **ORS 192.450 or 192.460.**

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

24

25 “NOTICE OF LOCAL INITIATIVES

26

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

29 “**SECTION 6. (1) Upon receiving a prospective petition for an initi-**
30 **ative measure:**

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

3 “(b) Under ORS 250.265, the city elections officer shall provide no-
4 tice to the Secretary of State of the prospective petition for an initi-
5 ative measure.

6 “(2) Upon receipt of notice of a prospective petition for an initiative
7 measure under subsection (1) of this section, the Secretary of State
8 shall provide reasonable statewide notice of the prospective petition
9 for an initiative measure.

10 “(3) Upon determining whether a prospective petition for an initi-
11 ative measure:

12 “(a) Meets the requirements of Article IV, section 1 (2)(d), and Ar-
13 ticle VI, section 10, of the Oregon Constitution, the county clerk shall
14 provide notice to the Secretary of State of the clerk’s determination.

15 “(b) Meets the requirements of Article IV, section 1 (2)(d) and (5),
16 of the Oregon Constitution, the city elections officer shall provide
17 notice to the Secretary of State of the elections officer’s determi-
18 nation.

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

21
22 **“APPROPRIATION**

23
24 **“SECTION 7. In addition to and not in lieu of any other appropri-
25 ation, there is appropriated to the Secretary of State, for the biennium
26 ending June 30, 2017, out of the General Fund, the amount of \$_____**
27 **for the purpose of implementing the provisions of section 6 of this 2016**
28 **Act.**

29
30 **“CONFORMING AMENDMENTS**

1 **SECTION 8.** ORS 147.421 is amended to read:

2 “147.421. (1) If a public body is the custodian of any of the following in-
3 formation, upon the request of the victim, the public body shall provide to
4 the victim any of the following information of which it is the custodian and
5 that is about the defendant or convicted criminal:

6 “(a) The conviction and sentence;

7 “(b) Criminal history;

8 “(c) Imprisonment; and

9 “(d) Future release from physical custody.

10 “(2) A public body, in its discretion, may provide the requested informa-
11 tion by furnishing the victim with copies of public records. The public body
12 may charge the victim its actual cost for making public records available as
13 provided in ORS 192.440 [(4)] (5).

14 “(3) As used in this section:

15 “(a) ‘Criminal history’ means a description of the prior arrests, con-
16 victions and sentences of the person.

17 “(b) ‘Future release’ means the projected or scheduled date of release of
18 the person from confinement, the name and location of the correctional fa-
19 cility from which the person is to be released and the community where the
20 person is scheduled to reside upon release.

21 “(c) ‘Imprisonment’ means the name and location of the correctional fa-
22 cility in which the person is confined.

23 “(d) ‘Public body’ has the meaning given that term in ORS 192.410.

24 **SECTION 9.** ORS 802.183 is amended to read:

25 “802.183. (1) The Department of Transportation may establish fees rea-
26 sonably calculated to reimburse it for its actual cost in making personal in-
27 formation available to a person or government agency authorized under ORS
28 802.179 to obtain the information. Fees established under this subsection are
29 subject to the provisions of ORS 192.440 [(4) to (6)] (5) to (7).

30 “(2) The department may adopt rules specifying conditions that must be

1 met by a person or government agency requesting personal information under
2 ORS 802.179. Such conditions may include but need not be limited to:

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

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

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

8 and

9 “(d) Submitting a written request for the personal information in a form
10 prescribed by the department.

11

12

“CAPTIONS

13

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

18