

Requested by Representative BARKER

**PROPOSED AMENDMENTS TO
SENATE BILL 505**

1 On page 1 of the printed bill, line 3, after “132.430” delete the rest of the
2 line and line 4 and insert “and 192.502; and repealing ORS 132.080.”.

3 Delete lines 6 through 24 and delete pages 2 through 22 and insert:

4 **“SECTION 1. (1)(a) The judge charging the grand jury pursuant to**
5 **ORS 132.070 shall instruct the grand jury that a certified shorthand**
6 **reporter will be assigned to report on the proceedings of the grand jury**
7 **described in section 2 of this 2017 Act. For purposes of this section, the**
8 **proceedings of the grand jury do not include:**

9 **“(A) Nontestimonial matters;**

10 **“(B) A proceeding or portion of a proceeding that solely aids in the**
11 **production of subpoenaed materials;**

12 **“(C) Grand jury deliberations or voting; or**

13 **“(D) Information not subject to release or disclosure as described**
14 **in section 4 of this 2017 Act.**

15 **“(b) The court shall appoint a certified shorthand reporter, from**
16 **funds appropriated for that purpose, who shall be permitted to attend**
17 **all proceedings of the grand jury for the purpose of taking accurate**
18 **notes by shorthand or by means of a mechanical or electronic typing**
19 **device. The certified shorthand reporter shall be sworn to accurately**
20 **report all proceedings of the grand jury described in section 2 of this**
21 **2017 Act and to keep secret any information concerning the grand jury**

1 **proceedings, except as ordered by the court.**

2 **“(c) The Chief Justice of the Supreme Court shall establish policies**
3 **and procedures to carry out the provisions of this section and sections**
4 **2 and 3 of this 2017 Act. The policies and procedures may include es-**
5 **tablishing additional requirements for certified shorthand reporters**
6 **permitted to transcribe grand jury proceedings under this section.**

7 **“(d) The prosecuting attorney shall provide access to the premises**
8 **in which the grand jury fulfills its obligations to the court and the**
9 **certified shorthand reporter for the purpose of carrying out the pro-**
10 **visions of this section and section 2 of this 2017 Act. The presiding**
11 **judge of each judicial district may enter into an agreement with**
12 **prosecuting attorneys that identifies the conditions and terms of ac-**
13 **cess.**

14 **“(2) A failure of a certified shorthand reporter to accurately record**
15 **all or part of a grand jury proceeding does not affect the validity of**
16 **any prosecution or indictment.**

17 **“(3) This section and section 2 of this 2017 Act do not apply to grand**
18 **jury proceedings under ORS 132.440 that inquire into conditions in**
19 **correctional facilities and youth correction facilities.**

20 **“(4) As used in this section, ‘certified shorthand reporter’ means a**
21 **person certified under ORS 8.415 to 8.455 who has passed a criminal**
22 **background check.**

23 **“SECTION 2. (1) Except as provided in subsection (2) of this section,**
24 **a certified shorthand reporter described in section 1 of this 2017 Act**
25 **shall report all testimonial matters that come before the grand jury**
26 **related to a particular case, including:**

27 **“(a) The case name and number;**

28 **“(b) The names of witnesses appearing before the grand jury;**

29 **“(c) Each question asked of a witness appearing to testify before the**
30 **grand jury;**

1 “(d) Each response given by a witness appearing to testify before
2 the grand jury; and

3 “(e) Any statements made by a grand juror as provided in ORS
4 132.350 during the proceeding.

5 “(2) The certified shorthand reporter reporting a grand jury pro-
6 ceeding may not report:

7 “(a) Nontestimonial matters;

8 “(b) A proceeding or portion of a proceeding that solely aids in the
9 production of subpoenaed materials;

10 “(c) Grand jury deliberations or voting; or

11 “(d) Information not subject to release or disclosure as described in
12 section 4 of this 2017 Act.

13 “(3) At the conclusion of a grand jury proceeding, the certified
14 shorthand reporter reporting the grand jury proceeding shall certify
15 that the report is a true and accurate report of the proceeding.

16 “(4) The certified shorthand reporter shall file reports of grand jury
17 proceedings with the court.

18 “SECTION 3. (1) Reports of grand jury proceedings produced pur-
19 suant to sections 1 and 2 of this 2017 Act, and transcripts prepared
20 from those reports, may not be released except as described in this
21 section.

22 “(2) When an indictment resulting from grand jury proceedings is
23 indorsed ‘a true bill,’ a report or a transcript may be released only in
24 the following manner:

25 “(a) When the defendant has been arraigned on the indictment, the
26 prosecuting attorney and the defense attorney may obtain a copy of a
27 report by filing a petition requesting the report and upon a court
28 granting the petition by finding that there is a particularized need for
29 the report. Unless the court orders otherwise, a person or entity may
30 not copy, disseminate or republish the report released pursuant to this

1 subsection except to provide a copy to an agent of the prosecuting
2 attorney, or to an agent of the defense attorney, for the limited pur-
3 pose of case preparation. Nothing in this subsection prohibits a pros-
4 ecuting attorney or defense attorney from having a victim or witness
5 review, in the presence of the prosecuting attorney, the prosecuting
6 attorney's agent, the defense attorney or the defense attorney's agent,
7 the grand jury testimony of that victim or witness as reported or
8 transcribed.

9 “(b) When the defendant has been arraigned but is not represented
10 by an attorney, the defendant may petition the court for an order al-
11 lowing the defendant to obtain a copy of the report upon the court
12 finding that there is a particularized need for the report. The court
13 may set conditions on the release of the report.

14 “(c) Unless otherwise ordered by the court or prohibited by law,
15 upon a finding of a particularized need, the court shall make the re-
16 port available to the prosecuting attorney and the defense attorney or
17 defendant, subject to the restrictions provided for in this section and
18 section 4 of this 2017 Act, as soon as practicable and within 10 days
19 after the arraignment on the indictment, unless the court orders an
20 extension of the time period for good cause.

21 “(d) If the court's determination of whether a particularized need
22 exists under this subsection requires that the court examine the re-
23 port, or a transcript prepared from the report, of the grand jury pro-
24 ceedings, the examination shall occur in camera outside the presence
25 of the parties.

26 “(e) A petition to request a report of a grand jury proceeding, or a
27 portion of a report, under this subsection must be filed no later than
28 14 days before the first scheduled trial date unless good cause is shown
29 by the petitioning party for the delay in filing the petition.

30 “(f) As used in this subsection:

1 “(A) ‘Agent’ means a person that has a fiduciary responsibility to
2 the prosecuting attorney or to the defense attorney. Under no cir-
3 cumstances shall the defendant be considered an agent of the prose-
4 cuting attorney or the defense attorney.

5 “(B) ‘Particularized need’ means:

6 “(i) The report of a grand jury proceeding is needed to avoid a
7 manifest injustice, the need for the disclosure is substantially greater
8 than the need for the secrecy of the grand jury proceedings and the
9 request for the report is limited only to the portion or portions of the
10 report necessary to avoid the manifest injustice; or

11 “(ii) The disclosure of the report is required by a constitutional or
12 statutory provision of law.

13 “(3)(a) Except as provided in paragraph (b) of this subsection, when
14 an indictment resulting from a grand jury proceeding is indorsed ‘not
15 a true bill,’ the report of the grand jury proceeding produced pursuant
16 to sections 1 and 2 of this 2017 Act may not be released and shall re-
17 main sealed and preserved with the court.

18 “(b) When a grand jury inquires into the conduct of a peace officer
19 as defined in ORS 133.005 for acts occurring in the performance of the
20 officer’s duties, and an indictment resulting from the grand jury pro-
21 ceedings is indorsed “not a true bill,” a person may file a motion re-
22 questing a court order releasing all or a portion of the report. A copy
23 of the motion must be served on the prosecuting attorney and the
24 officer’s attorney, or the officer if the officer is not represented by an
25 attorney. In deciding whether to issue such an order, the court shall
26 determine whether the public interest in disclosure outweighs the in-
27 terest in maintaining the secrecy of the grand jury proceedings. If the
28 court orders disclosure, the court may set reasonable conditions on
29 copying, disseminating or republishing the report.

30 “(4)(a) Except as provided in paragraph (b) of this subsection, when

1 grand jury proceedings do not result in an indictment indorsed as ei-
2 ther ‘a true bill’ or ‘not a true bill,’ the report of grand jury pro-
3 ceedings produced pursuant to sections 1 and 2 of this 2017 Act may
4 not be disclosed or released.

5 “(b)(A) When subsequent grand jury proceedings occur inquiring
6 into the same criminal episode as the grand jury proceedings described
7 in paragraph (a) of this subsection, and the subsequent proceedings
8 result in an indictment indorsed as ‘a true bill,’ the prosecuting at-
9 torney shall provide notice to the person charged in the indictment
10 of the occurrence of the earlier grand jury proceedings. After the
11 person is arraigned on the indictment, the report produced during the
12 earlier grand jury proceedings may be obtained in the manner set
13 forth in subsection (2) of this section.

14 “(B) As used in this paragraph, ‘criminal episode’ has the meaning
15 given that term in ORS 131.505.

16 “(5) The Chief Justice of the Supreme Court may establish a fee for
17 the cost of providing a copy of a report of a grand jury proceeding to
18 a person requesting a copy under this section. The fee must be waived
19 when the requesting person is a prosecuting attorney, a defense at-
20 torney or a defendant who is not represented by an attorney.

21 “(6) A report of a grand jury proceeding produced pursuant to
22 sections 1 and 2 of this 2017 Act, or a transcript prepared from the
23 report:

24 “(a) May not be used as evidence in any subsequent proceeding ex-
25 cept in the criminal proceeding arising from the grand jury’s
26 indictment following the grand jury proceeding, or in a subsequent
27 proceeding against a properly joined codefendant, and only as permit-
28 ted under ORS 40.375, 40.380, 40.450, 40.460 or 40.465.

29 “(b) May not be used to challenge the indorsement of an indictment
30 ‘a true bill’ or the proceedings that led to the indorsement.

1 “(c) May not be used to challenge the validity of any prosecution
2 or indictment based on the fact that the grand jury received evidence
3 that would have been or was excluded at trial.

4 “(d) May be used as evidence in a prosecution for perjury or false
5 swearing committed by a witness while giving testimony during the
6 grand jury proceeding, trial or other proceeding involving a sworn
7 statement.

8 “(7)(a) The report, or a transcript prepared from the report, of a
9 grand jury proceeding is not considered discovery under ORS 135.805
10 to 135.873 or any other discovery provision in state or federal law.

11 “(b) Nothing in this section or sections 1 and 2 of this 2017 Act shall
12 be construed as creating a right for a defendant or a defense attorney
13 to receive discovery, as described in ORS 135.805 to 135.873, prior to the
14 indictment of the defendant.

15 “(8) A certified shorthand reporter reporting grand jury proceedings
16 under sections 1 and 2 of this 2017 Act is not subject to subpoena and
17 may not disclose any information concerning the grand jury pro-
18 ceedings without prior court order.

19 “SECTION 4. Notwithstanding section 3 of this 2017 Act, the fol-
20 lowing information presented to a grand jury is not subject to release
21 or disclosure in a report, transcript or other form:

22 “(1) Testimony concerning ‘protected health information’ as defined
23 in 45 C.F.R. 160.103, unless relevant to a charge considered by the
24 grand jury.

25 “(2) A witness’s address, telephone number or other information
26 constituting personal identification as defined in ORS 165.800 other
27 than the witness’s name.

28 “(3) The identity of any grand juror.

29 “(4) Financial records, or testimony concerning financial records,
30 of a witness obtained pursuant to a subpoena issued under the au-

1 **thority of the grand jury.**

2 **“SECTION 5.** ORS 132.090 is amended to read:

3 “132.090. (1) Except as provided in subsections (2) and (3) of this section
4 **and sections 1 and 2 of this 2017 Act**, no person other than the district
5 attorney or a witness actually under examination shall be present during the
6 sittings of the grand jury.

7 “(2) Upon a motion filed by the district attorney in the circuit court, the
8 circuit judge may appoint a [*reporter who shall attend the sittings of the*
9 *grand jury to take and report the testimony in any matters pending before the*
10 *grand jury, and may appoint a*] parent, guardian or other appropriate person
11 18 years of age or older to accompany any child 12 years of age or younger,
12 or any person with an intellectual disability, during an appearance before
13 the grand jury. The circuit judge, upon the district attorney’s showing to the
14 court that it is necessary for the proper examination of a witness appearing
15 before the grand jury, may appoint a guard, medical or other special at-
16 tendant or nurse, who shall be present in the grand jury room and shall at-
17 tend such sittings.

18 “(3) The district attorney may designate an interpreter who is certified
19 under ORS 45.291 to interpret the testimony of witnesses appearing before
20 the grand jury. The district attorney may designate a qualified interpreter,
21 as defined in ORS 45.288, if the circuit court determines that a certified in-
22 terpreter is not available and that the person designated by the district at-
23 torney is a qualified interpreter as defined in ORS 45.288. An interpreter
24 designated under this subsection may be present in the grand jury room and
25 attend the sittings of the grand jury.

26 “(4) No person other than members of the grand jury shall be present
27 when the grand jury is deliberating or voting upon a matter before it.

28 “(5) As used in this section, ‘intellectual disability’ has the meaning given
29 that term in ORS 427.005. Intellectual disability may be shown by attaching
30 to the motion of the district attorney:

1 “(a) Documentary evidence of intellectual functioning; or

2 “(b) The affidavit of a qualified person familiar with the person with an
3 intellectual disability. ‘Qualified person’ includes, but is not limited to, a
4 teacher, therapist or physician.

5 “**SECTION 6.** ORS 132.320 is amended to read:

6 “132.320. (1) Except as provided in subsections (2) to [(12)] **(13)** of this
7 section, in the investigation of a charge for the purpose of indictment, the
8 grand jury shall receive no other evidence than such as might be given on
9 the trial of the person charged with the crime in question.

10 “(2) A report or a copy of a report made by a physicist, chemist, medical
11 examiner, physician, firearms identification expert, examiner of questioned
12 documents, fingerprint technician, or an expert or technician in some com-
13 parable scientific or professional field, concerning the results of an exam-
14 ination, comparison or test performed by such person in connection with a
15 case which is the subject of a grand jury proceeding, shall, when certified
16 by such person as a report made by such person or as a true copy thereof,
17 be received in evidence in the grand jury proceeding.

18 “(3) An affidavit of a witness who is unable to appear before the grand
19 jury shall be received in evidence in the grand jury proceeding if, upon ap-
20 plication by the district attorney, the presiding judge for the judicial district
21 in which the grand jury is sitting authorizes the receipt after good cause has
22 been shown for the witness’ inability to appear. An affidavit taken in an-
23 other state or territory of the United States, the District of Columbia or in
24 a foreign country must be authenticated as provided in ORS chapter 194 be-
25 fore it can be used in this state.

26 “(4) A grand jury that is investigating a charge of criminal driving while
27 suspended or revoked under ORS 811.182 may receive in evidence an affidavit
28 of a peace officer with a report or copy of a report of the peace officer con-
29 cerning the peace officer’s investigation of the violation of ORS 811.182 by
30 the defendant.

1 “(5) A grand jury may receive testimony of a witness by means of simul-
2 taneous television transmission allowing the grand jury and district attorney
3 to observe and communicate with the witness and the witness to observe and
4 communicate with the grand jury and the district attorney.

5 “(6) A grand jury that is investigating a charge of failure to appear under
6 ORS 133.076, 153.992, 162.195 or 162.205 may receive in evidence an affidavit
7 of a court employee certifying that the defendant failed to appear as required
8 by law and setting forth facts sufficient to support that conclusion.

9 “(7)(a) Except as otherwise provided in this subsection, a grand jury may
10 receive in evidence through the testimony of one peace officer involved in
11 the criminal investigation under grand jury inquiry information from an of-
12 ficial report of another peace officer involved in the same criminal investi-
13 gation concerning the other peace officer’s investigation of the matter before
14 the grand jury. The statement of a person suspected of committing an offense
15 or inadmissible hearsay of persons other than the peace officer who compiled
16 the official report may not be presented to a grand jury under this para-
17 graph.

18 “(b) If the official report contains evidence other than chain of custody,
19 venue or the name of the person suspected of committing an offense, the
20 grand jurors must be notified that the evidence is being submitted by report
21 and that the peace officer who compiled the report will be made available
22 for testimony at the request of the grand jury. When a grand jury requests
23 the testimony of a peace officer under this paragraph, the peace officer may
24 present sworn testimony by telephone if requiring the peace officer’s pres-
25 ence before the grand jury would constitute an undue hardship on the peace
26 officer or the agency that employs or utilizes the peace officer.

27 “(8) A grand jury that is investigating a charge of failure to report as a
28 sex offender under ORS 163A.040 may receive in evidence certified copies of
29 the form required by ORS 163A.050 (2) and sex offender registration forms
30 and an affidavit of a representative of the Oregon State Police, as keepers

1 of the state’s sex offender registration records, certifying that the certified
2 copies of the forms constitute the complete record for the defendant.

3 “(9) The grand jury shall weigh all the evidence submitted to it; and when
4 it believes that other evidence within its reach will explain away the charge,
5 it should order such evidence to be produced, and for that purpose may re-
6 quire the district attorney to issue process for the witnesses.

7 “(10) A grand jury that is investigating a charge of driving while under
8 the influence of intoxicants in violation of ORS 813.010 may receive in evi-
9 dence an affidavit of a peace officer regarding any or all of the following:

10 “(a) Whether the defendant was driving.

11 “(b) Whether the defendant took or refused to take tests under any pro-
12 vision of ORS chapter 813.

13 “(c) The administration of tests under any provision of ORS chapter 813
14 and the results of such tests.

15 “(d) The officer’s observations of physical or mental impairment of the
16 defendant.

17 “(11)(a) A grand jury may receive in evidence an affidavit of a represen-
18 tative of a financial institution for the purpose of authenticating records of
19 the financial institution.

20 “(b) As used in this subsection, ‘financial institution’ means a financial
21 institution as defined in ORS 706.008, an entity that regularly issues, pro-
22 cesses or services credit cards or any other comparable entity that regularly
23 produces financial records.

24 “(12)(a) A defendant who has been arraigned on an information alleging
25 a felony charge that is the subject of a grand jury proceeding and who is
26 represented by an attorney has a right to appear before the grand jury as a
27 witness if, prior to the filing of an indictment, the defense attorney serves
28 upon the district attorney written notice requesting the appearance. The
29 notice shall include an electronic mail address at which the defense attorney
30 may be contacted.

1 “(b) A district attorney is not obligated to inform a defendant that a
2 grand jury proceeding investigating charges against the defendant is pend-
3 ing, in progress or about to occur.

4 “(c) Upon receipt of the written notice described in paragraph (a) of this
5 subsection, the district attorney shall provide in writing the date, time and
6 location of the defendant’s appearance before the grand jury to the defense
7 attorney at the indicated electronic mail address. In the event of a schedul-
8 ing conflict, the district attorney shall reasonably accommodate the sched-
9 ules of the defendant and the defense attorney if the accommodation does
10 not delay the grand jury proceeding beyond the time limit for holding a
11 preliminary hearing described in ORS 135.070 (2).

12 “(d) Notwithstanding ORS 135.070 and paragraph (c) of this subsection,
13 in order to accommodate a scheduling conflict, upon the request of the de-
14 fendant the time limit for holding a preliminary hearing described in ORS
15 135.070 (2) may be extended by a maximum of an additional five judicial days
16 and the district attorney and the defendant may stipulate to an extension
17 of greater duration. During a period of delay caused by a scheduling conflict
18 under this subsection, ORS 135.230 to 135.290 shall continue to apply con-
19 cerning the custody status of the defendant.

20 **“(13) If a grand jury proceeding is subject to reporting pursuant to**
21 **sections 1 and 2 of this 2017 Act, the grand jury may receive in evi-**
22 **dence, and an indictment may be based in whole or in part upon, the**
23 **sworn testimony of a peace officer as defined in ORS 161.015 who re-**
24 **lates an out-of-court statement of a victim or witness that is offered**
25 **for the truth of the matter asserted. In order for a peace officer to**
26 **testify to a hearsay statement pursuant to this section, the officer**
27 **must at the time of the proceeding have at least two years of law**
28 **enforcement experience or have completed a training course, certified**
29 **by the Department of Public Safety Standards and Training, that in-**
30 **cludes training in investigating and reporting cases and testifying at**

1 **grand jury proceedings.**

2 **“SECTION 7.** ORS 132.430 is amended to read:

3 “132.430. (1) When a person has been held to answer a criminal charge
4 and the indictment in relation thereto is not found ‘a true bill,’ it must be
5 indorsed ‘not a true bill,’ which indorsement must be signed by the foreman
6 and filed with the clerk of the court, in whose office it shall remain a public
7 record. In the case of an indictment not found ‘a true bill’ against a person
8 not so held, the same[, *together with the minutes of the evidence in relation*
9 *thereto,*] must be destroyed by the grand jury.

10 “(2) When an indictment indorsed ‘not a true bill’ has been filed with the
11 clerk of the court, the effect thereof is to dismiss the charge; and the same
12 cannot be again submitted to or inquired of by the grand jury unless the
13 court so orders.

14 **“SECTION 8.** ORS 192.502 is amended to read:

15 “192.502. The following public records are exempt from disclosure under
16 ORS 192.410 to 192.505:

17 “(1) Communications within a public body or between public bodies of an
18 advisory nature to the extent that they cover other than purely factual ma-
19 terials and are preliminary to any final agency determination of policy or
20 action. This exemption shall not apply unless the public body shows that in
21 the particular instance the public interest in encouraging frank communi-
22 cation between officials and employees of public bodies clearly outweighs the
23 public interest in disclosure.

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

30 “(3) Upon compliance with ORS 192.437, public body employee or volun-

1 teer residential addresses, residential telephone numbers, personal cellular
2 telephone numbers, personal electronic mail addresses, driver license num-
3 bers, employer-issued identification card numbers, emergency contact infor-
4 mation, Social Security numbers, dates of birth and other telephone numbers
5 contained in personnel records maintained by the public body that is the
6 employer or the recipient of volunteer services. This exemption:

7 “(a) Does not apply to the addresses, dates of birth and telephone numbers
8 of employees or volunteers who are elected officials, except that a judge or
9 district attorney subject to election may seek to exempt the judge’s or dis-
10 trict attorney’s address or telephone number, or both, under the terms of
11 ORS 192.445;

12 “(b) Does not apply to employees or volunteers to the extent that the
13 party seeking disclosure shows by clear and convincing evidence that the
14 public interest requires disclosure in a particular instance pursuant to ORS
15 192.437;

16 “(c) Does not apply to a substitute teacher as defined in ORS 342.815
17 when requested by a professional education association of which the substi-
18 tute teacher may be a member; and

19 “(d) Does not relieve a public employer of any duty under ORS 243.650 to
20 243.782.

21 “(4) Information submitted to a public body in confidence and not other-
22 wise required by law to be submitted, where such information should rea-
23 sonably be considered confidential, the public body has obliged itself in good
24 faith not to disclose the information, and when the public interest would
25 suffer by the disclosure.

26 “(5) Information or records of the Department of Corrections, including
27 the State Board of Parole and Post-Prison Supervision, to the extent that
28 disclosure would interfere with the rehabilitation of a person in custody of
29 the department or substantially prejudice or prevent the carrying out of the
30 functions of the department, if the public interest in confidentiality clearly

1 outweighs the public interest in disclosure.

2 “(6) Records, reports and other information received or compiled by the
3 Director of the Department of Consumer and Business Services in the ad-
4 ministration of ORS chapters 723 and 725 not otherwise required by law to
5 be made public, to the extent that the interests of lending institutions, their
6 officers, employees and customers in preserving the confidentiality of such
7 information outweighs the public interest in disclosure.

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

9 “(8) Any public records or information the disclosure of which is prohib-
10 ited by federal law or regulations.

11 “(9)(a) Public records or information the disclosure of which is prohibited
12 or restricted or otherwise made confidential or privileged under Oregon law.

13 “(b) Subject to ORS 192.423, paragraph (a) of this subsection does not
14 apply to factual information compiled in a public record when:

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

16 “(B) The factual information is not prohibited from disclosure under any
17 applicable state or federal law, regulation or court order and is not other-
18 wise exempt from disclosure under ORS 192.410 to 192.505;

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

22 “(D) The factual information was not compiled in preparation for liti-
23 gation, arbitration or an administrative proceeding that was reasonably
24 likely to be initiated or that has been initiated by or against the public body;
25 and

26 “(E) The holder of the privilege under ORS 40.225 has made or authorized
27 a public statement characterizing or partially disclosing the factual infor-
28 mation compiled by or at the attorney’s direction.

29 “(10) Public records or information described in this section, furnished
30 by the public body originally compiling, preparing or receiving them to any

1 other public officer or public body in connection with performance of the
2 duties of the recipient, if the considerations originally giving rise to the
3 confidential or exempt nature of the public records or information remain
4 applicable.

5 “(11) Records of the Energy Facility Siting Council concerning the review
6 or approval of security programs pursuant to ORS 469.530.

7 “(12) Employee and retiree address, telephone number and other nonfi-
8 nancial membership records and employee financial records maintained by
9 the Public Employees Retirement System pursuant to ORS chapters 238 and
10 238A.

11 “(13) Records of or submitted to the State Treasurer, the Oregon Invest-
12 ment Council or the agents of the treasurer or the council relating to active
13 or proposed publicly traded investments under ORS chapter 293, including
14 but not limited to records regarding the acquisition, exchange or liquidation
15 of the investments. For the purposes of this subsection:

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

17 “(A) Information in investment records solely related to the amount paid
18 directly into an investment by, or returned from the investment directly to,
19 the treasurer or council; or

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

22 “(b) An investment in a publicly traded investment is no longer active
23 when acquisition, exchange or liquidation of the investment has been con-
24 cluded.

25 “(14)(a) Records of or submitted to the State Treasurer, the Oregon In-
26 vestment Council, the Oregon Growth Board or the agents of the treasurer,
27 council or board relating to actual or proposed investments under ORS
28 chapter 293 or 348 in a privately placed investment fund or a private asset
29 including but not limited to records regarding the solicitation, acquisition,
30 deployment, exchange or liquidation of the investments including but not

1 limited to:

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

4 “(B) Financial statements of an investment fund, an asset ownership or
5 their respective investment vehicles.

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

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

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

13 “(F) Investment agreements and related documents.

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

15 “(A) The name, address and vintage year of each privately placed invest-
16 ment fund.

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

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

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

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

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

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

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

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

7 “(15) The monthly reports prepared and submitted under ORS 293.761 and
8 293.766 concerning the Public Employees Retirement Fund and the Industrial
9 Accident Fund may be uniformly treated as exempt from disclosure for a
10 period of up to 90 days after the end of the calendar quarter.

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

13 “(17)(a) The following records, communications and information submitted
14 to the Oregon Business Development Commission, the Oregon Business De-
15 velopment Department, the State Department of Agriculture, the Oregon
16 Growth Board, the Port of Portland or other ports as defined in ORS 777.005,
17 or a county or city governing body and any board, department, commission,
18 council or agency thereof, by applicants for investment funds, grants, loans,
19 services or economic development moneys, support or assistance including,
20 but not limited to, those described in ORS 285A.224:

21 “(A) Personal financial statements.

22 “(B) Financial statements of applicants.

23 “(C) Customer lists.

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

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

2 “(F) Marketing strategy information that relates to applicant’s plan to
3 address specific markets and applicant’s strategy regarding specific compet-
4 itors.

5 “(b) The following records, communications and information submitted to
6 the State Department of Energy by applicants for tax credits or for grants
7 awarded under ORS 469B.256:

8 “(A) Personal financial statements.

9 “(B) Financial statements of applicants.

10 “(C) Customer lists.

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

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

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

22 “(18) Records, reports or returns submitted by private concerns or enter-
23 prises required by law to be submitted to or inspected by a governmental
24 body to allow it to determine the amount of any transient lodging tax pay-
25 able and the amounts of such tax payable or paid, to the extent that such
26 information is in a form which would permit identification of the individual
27 concern or enterprise. Nothing in this subsection shall limit the use which
28 can be made of such information for regulatory purposes or its admissibility
29 in any enforcement proceedings. The public body shall notify the taxpayer
30 of the delinquency immediately by certified mail. However, in the event that

1 the payment or delivery of transient lodging taxes otherwise due to a public
2 body is delinquent by over 60 days, the public body shall disclose, upon the
3 request of any person, the following information:

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

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

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

8 “(19) All information supplied by a person under ORS 151.485 for the
9 purpose of requesting appointed counsel, and all information supplied to the
10 court from whatever source for the purpose of verifying the financial eligi-
11 bility of a person pursuant to ORS 151.485.

12 “(20) Workers’ compensation claim records of the Department of Con-
13 sumer and Business Services, except in accordance with rules adopted by the
14 Director of the Department of Consumer and Business Services, in any of the
15 following circumstances:

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

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

20 “(c) When the disclosure is made in such a manner that the disclosed in-
21 formation cannot be used to identify any worker who is the subject of a
22 claim.

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

25 “(21) Sensitive business records or financial or commercial information
26 of the Oregon Health and Science University that is not customarily pro-
27 vided to business competitors.

28 “(22) Records of Oregon Health and Science University regarding candi-
29 dates for the position of president of the university.

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

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

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

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

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

10 “(a) Personal and corporate financial statements and information, in-
11 cluding tax returns.

12 “(b) Credit reports.

13 “(c) Project appraisals, excluding appraisals obtained in the course of
14 transactions involving an interest in real estate that is acquired, leased,
15 rented, exchanged, transferred or otherwise disposed of as part of the project,
16 but only after the transactions have closed and are concluded.

17 “(d) Market studies and analyses.

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

20 “(f) Commitment letters.

21 “(g) Project pro forma statements.

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

23 “(i) Audits.

24 “(j) Project tenant correspondence.

25 “(k) Personal information about a tenant.

26 “(L) Housing assistance payments.

27 “(25) Raster geographic information system (GIS) digital databases, pro-
28 vided by private forestland owners or their representatives, voluntarily and
29 in confidence to the State Forestry Department, that is not otherwise re-
30 quired by law to be submitted.

1 “(26) Sensitive business, commercial or financial information furnished to
2 or developed by a public body engaged in the business of providing electricity
3 or electricity services, if the information is directly related to a transaction
4 described in ORS 261.348, or if the information is directly related to a bid,
5 proposal or negotiations for the sale or purchase of electricity or electricity
6 services, and disclosure of the information would cause a competitive disad-
7 vantage for the public body or its retail electricity customers. This sub-
8 section does not apply to cost-of-service studies used in the development or
9 review of generally applicable rate schedules.

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

18 “(28) Personally identifiable information about customers of a municipal
19 electric utility or a people’s utility district or the names, dates of birth,
20 driver license numbers, telephone numbers, electronic mail addresses or So-
21 cial Security numbers of customers who receive water, sewer or storm drain
22 services from a public body as defined in ORS 174.109. The utility or district
23 may release personally identifiable information about a customer, and a
24 public body providing water, sewer or storm drain services may release the
25 name, date of birth, driver license number, telephone number, electronic mail
26 address or Social Security number of a customer, if the customer consents
27 in writing or electronically, if the disclosure is necessary for the utility,
28 district or other public body to render services to the customer, if the dis-
29 closure is required pursuant to a court order or if the disclosure is otherwise
30 required by federal or state law. The utility, district or other public body

1 may charge as appropriate for the costs of providing such information. The
2 utility, district or other public body may make customer records available
3 to third party credit agencies on a regular basis in connection with the es-
4 tablishment and management of customer accounts or in the event such ac-
5 counts are delinquent.

6 “(29) A record of the street and number of an employee’s address submit-
7 ted to a special district to obtain assistance in promoting an alternative to
8 single occupant motor vehicle transportation.

9 “(30) Sensitive business records, capital development plans or financial
10 or commercial information of Oregon Corrections Enterprises that is not
11 customarily provided to business competitors.

12 “(31) Documents, materials or other information submitted to the Director
13 of the Department of Consumer and Business Services in confidence by a
14 state, federal, foreign or international regulatory or law enforcement agency
15 or by the National Association of Insurance Commissioners, its affiliates or
16 subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to
17 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723,
18 725 or 726, the Bank Act or the Insurance Code when:

19 “(a) The document, material or other information is received upon notice
20 or with an understanding that it is confidential or privileged under the laws
21 of the jurisdiction that is the source of the document, material or other in-
22 formation; and

23 “(b) The director has obligated the Department of Consumer and Business
24 Services not to disclose the document, material or other information.

25 “(32) A county elections security plan developed and filed under ORS
26 254.074.

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

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

30 “(A) Electricity;

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

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

3 “(D) Petroleum products;

4 “(E) Sewage; or

5 “(F) Water.

6 “(b) Telecommunication systems, including cellular, wireless or radio
7 systems.

8 “(c) Data transmissions by whatever means provided.

9 “(34) The information specified in ORS 25.020 (8) if the Chief Justice of
10 the Supreme Court designates the information as confidential by rule under
11 ORS 1.002.

12 “(35)(a) Employer account records of the State Accident Insurance Fund
13 Corporation.

14 “(b) As used in this subsection, ‘employer account records’ means all re-
15 cords maintained in any form that are specifically related to the account of
16 any employer insured, previously insured or under consideration to be in-
17 sured by the State Accident Insurance Fund Corporation and any informa-
18 tion obtained or developed by the corporation in connection with providing,
19 offering to provide or declining to provide insurance to a specific employer.
20 ‘Employer account records’ includes, but is not limited to, an employer’s
21 payroll records, premium payment history, payroll classifications, employee
22 names and identification information, experience modification factors, loss
23 experience and dividend payment history.

24 “(c) The exemption provided by this subsection may not serve as the basis
25 for opposition to the discovery documents in litigation pursuant to applicable
26 rules of civil procedure.

27 “(36)(a) Claimant files of the State Accident Insurance Fund Corporation.

28 “(b) As used in this subsection, ‘claimant files’ includes, but is not limited
29 to, all records held by the corporation pertaining to a person who has made
30 a claim, as defined in ORS 656.005, and all records pertaining to such a

1 claim.

2 “(c) The exemption provided by this subsection may not serve as the basis
3 for opposition to the discovery documents in litigation pursuant to applicable
4 rules of civil procedure.

5 “(37) Except as authorized by ORS 408.425, records that certify or verify
6 an individual’s discharge or other separation from military service.

7 “(38) Records of or submitted to a domestic violence service or resource
8 center that relate to the name or personal information of an individual who
9 visits a center for service, including the date of service, the type of service
10 received, referrals or contact information or personal information of a family
11 member of the individual. As used in this subsection, ‘domestic violence
12 service or resource center’ means an entity, the primary purpose of which is
13 to assist persons affected by domestic or sexual violence by providing refer-
14 rals, resource information or other assistance specifically of benefit to do-
15 mestic or sexual violence victims.

16 “(39) Information reported to the Oregon Health Authority under ORS
17 431A.860, except as provided in ORS 431A.860 (2)(b) information disclosed by
18 the authority under ORS 431A.865 and any information related to disclosures
19 made by the authority under ORS 431A.865, including information identifying
20 the recipient of the information.

21 “(40)(a) Electronic mail addresses in the possession or custody of an
22 agency or subdivision of the executive department, as defined in ORS 174.112,
23 a local government or local service district, as defined in ORS 174.116, or a
24 special government body, as defined in ORS 174.117.

25 “(b) This subsection does not apply to electronic mail addresses assigned
26 by a public body to public employees for use by the employees in the ordi-
27 nary course of their employment.

28 “(41) Residential addresses, residential telephone numbers, personal cel-
29 lular telephone numbers, personal electronic mail addresses, driver license
30 numbers, emergency contact information, Social Security numbers, dates of

1 birth and other telephone numbers of individuals currently or previously
2 certified or licensed by the Department of Public Safety Standards and
3 Training contained in the records maintained by the department.

4 “(42) Personally identifiable information and contact information of vet-
5 erans as defined in ORS 408.225 and of persons serving on active duty or as
6 reserve members with the Armed Forces of the United States, National
7 Guard or other reserve component that was obtained by the Department of
8 Veterans’ Affairs in the course of performing its duties and functions, in-
9 cluding but not limited to names, residential and employment addresses,
10 dates of birth, driver license numbers, telephone numbers, electronic mail
11 addresses, Social Security numbers, marital status, dependents, the character
12 of discharge from military service, military rating or rank, that the person
13 is a veteran or has provided military service, information relating to an ap-
14 plication for or receipt of federal or state benefits, information relating to
15 the basis for receipt or denial of federal or state benefits and information
16 relating to a home loan or grant application, including but not limited to
17 financial information provided in connection with the application.

18 “(43) **A report, or a transcript prepared from a report, of a grand**
19 **jury proceeding produced pursuant to sections 1 and 2 of this 2017 Act.**

20 **“SECTION 9. ORS 132.080 is repealed.**

21 **“SECTION 10. Sections 1 to 4 of this 2017 Act, the amendments to**
22 **ORS 132.090, 132.320, 132.430 and 192.502 by sections 5 to 8 of this 2017**
23 **Act and the repeal of ORS 132.080 by section 9 of this 2017 Act become**
24 **operative on October 1, 2018.”**

25
