

Requested by SENATE COMMITTEE ON GENERAL GOVERNMENT AND ACCOUNTABILITY

**PROPOSED AMENDMENTS TO
SENATE BILL 481**

1 On page 1 of the printed bill, line 2, after “40.280,” delete the rest of the
2 line and line 3 and insert “192.410, 192.440 and 287A.350.”

3 Delete lines 5 through 30 and delete pages 2 through 8 and insert:

4 **“SECTION 1. Sections 2, 5, 6, 8 and 9 of this 2017 Act are added to
5 and made a part of ORS 192.410 to 192.505.**

6 **“SECTION 2. The Legislative Assembly finds and declares that:**

7 **“(1) Protecting public access to information about government and
8 governmental actions ensures that the public is informed and able to
9 meaningfully participate in government.**

10 **“(2) Access to information enables Oregonians to ensure that their
11 public servants perform honestly, faithfully and competently.**

12 **“(3) Exemptions from disclosure for public records are sometimes
13 appropriate in order to protect particular interests, including but not
14 limited to:**

15 **“(a) The privacy and safety of individuals;**

16 **“(b) Public safety; and**

17 **“(c) Private economic affairs from unreasonable intrusion.**

18 **“(4) It is the policy of this state that:**

19 **“(a) Public records be accessible to members of the public, with
20 specific exemptions;**

21 **“(b) Exemptions from public records disclosure requirements be**

1 **construed narrowly in favor of the public’s right to know, while giving**
2 **effect to statutory exemptions;**

3 **“(c) Access to public records be timely;**

4 **“(d) Fees for access to public records may be waived or reduced to**
5 **serve the public interest and should not exceed the actual cost of**
6 **making the public records available;**

7 **“(e) An exemption from mandatory disclosure enacted after the ef-**
8 **fective date of this 2017 Act must expressly identify the interests for**
9 **which the exemption is needed; and**

10 **“(f) All exemptions from public records disclosure requirements be**
11 **written and interpreted to ensure that an exemption is no broader**
12 **than necessary.**

13 **“SECTION 3. ORS 192.410 is amended to read:**

14 **“192.410. As used in ORS 192.410 to 192.505:**

15 **“(1) ‘Business day’ means a day other than Saturday, Sunday or a**
16 **legal holiday and on which at least one paid employee of the public**
17 **body that received the public records request is scheduled to and does**
18 **report to work. In the case of a community college district, commu-**
19 **nity college service district, public university, school district or edu-**
20 **cation service district, ‘business day’ does not include any day on**
21 **which the central administration offices of the district or university**
22 **are closed.**

23 **“(2) ‘Custodian’ means:**

24 **“(a) The person described in ORS 7.110 for purposes of court records; or**

25 **“(b) A public body mandated, directly or indirectly, to create, maintain,**
26 **care for or control a public record. ‘Custodian’ does not include a public**
27 **body that has custody of a public record as an agent of another public body**
28 **that is the custodian unless the public record is not otherwise available.**

29 **“[(2)] (3) ‘Person’ includes any natural person, corporation, partnership,**
30 **firm, association or member or committee of the Legislative Assembly.**

1 “[3] (4) ‘Public body’ includes every state officer, agency, department,
2 division, bureau, board and commission; every county and city governing
3 body, school district, special district, municipal corporation, and any board,
4 department, commission, council, or agency thereof; and any other public
5 agency of this state.

6 “[4(a)] (5)(a) ‘Public record’ includes any writing that contains infor-
7 mation relating to the conduct of the public’s business, including but not
8 limited to court records, mortgages, and deed records, prepared, owned, used
9 or retained by a public body regardless of physical form or characteristics.

10 “(b) ‘Public record’ does not include any writing that does not relate to
11 the conduct of the public’s business and that is contained on a privately
12 owned computer.

13 “[5] (6) ‘State agency’ means any state officer, department, board, com-
14 mission or court created by the Constitution or statutes of this state but does
15 not include the Legislative Assembly or its members, committees, officers or
16 employees insofar as they are exempt under section 9, Article IV of the
17 Oregon Constitution.

18 “[6] (7) ‘Writing’ means handwriting, typewriting, printing, photograph-
19 ing and every means of recording, including letters, words, pictures, sounds,
20 or symbols, or combination thereof, and all papers, maps, files, facsimiles or
21 electronic recordings.

22 **“SECTION 4.** ORS 192.440 is amended to read:

23 “192.440. (1) **A public body that is** the custodian of any public record
24 that a person has a right to inspect shall give the person, upon **receipt of**
25 **a written** request:

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

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

29 “[2] *If a person makes a written request to inspect a public record or to*
30 *receive a copy of a public record, the public body receiving the request shall*

1 *respond as soon as practicable and without unreasonable delay. The public*
2 *body may request additional information or clarification from the requester for*
3 *the purpose of expediting the public body’s response to the request. The re-*
4 *sponse of the public body must acknowledge receipt of the request and must*
5 *include one of the following:]*

6 *“(a) A statement that the public body does not possess, or is not the*
7 *custodian of, the public record.]*

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

10 *“(c) A statement that the public body is the custodian of at least some of*
11 *the requested public records, an estimate of the time the public body requires*
12 *before the public records may be inspected or copies of the records will be*
13 *provided and an estimate of the fees that the requester must pay under sub-*
14 *section (4) of this section as a condition of receiving the public records.]*

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

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

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

27 **“(2) If an individual who is identified in a public body’s procedure**
28 **described in subsection (7)(a) of this section receives a written request**
29 **to inspect or receive a copy of a public record, the public body shall**
30 **within five business days after receiving the request acknowledge re-**

1 receipt of the request or complete the public body's response to the re-
2 quest. An acknowledgment under this subsection must:

3 “(a) Confirm that the public body is the custodian of the requested
4 record;

5 “(b) Inform the requester that the public body is not the custodian
6 of the requested record; or

7 “(c) Notify the requester that the public body is uncertain whether
8 the public body is the custodian of the requested record.

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

15 “(4)(a) The public body may establish fees reasonably calculated to reim-
16 burse the public body for the public body's actual cost of making public re-
17 cords available, including costs for summarizing, compiling or tailoring the
18 public records, either in organization or media, to meet the [*person's*] re-
19 quest.

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

27 “(c) The public body may not establish a fee greater than \$25 under this
28 section unless the public body first provides the [*requestor*] **requester** with
29 a written notification of the estimated amount of the fee and the
30 [*requestor*] **requester** confirms that the [*requestor*] **requester** wants the

1 public body to proceed with making the public record available.

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

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

11 “(6) A [*person*] **requester** who believes that there has been an unreason-
12 able denial of a fee waiver or fee reduction may petition the Attorney Gen-
13 eral or the district attorney in the same manner as a [*person*] **requester who**
14 petitions when inspection of a public record is denied under ORS 192.410 to
15 192.505. The Attorney General, the district attorney and the court have the
16 same authority in instances when a fee waiver or reduction is denied as [*it*
17 *has*] when inspection of a public record is denied.

18 “(7) A public body shall make available to the public a written procedure
19 for making public [*record*] **records** requests that includes:

20 “(a) The name of one or more [*persons*] **individuals within the public**
21 **body** to whom public [*record*] **records** requests may be sent, with addresses;
22 and

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

25 “(8) This section does not apply to signatures of individuals submitted
26 under ORS chapter 247 for purposes of registering to vote as provided in ORS
27 247.973.

28 **“SECTION 5. (1) A public body shall complete its response to a**
29 **written public records request that is received by an individual iden-**
30 **tified in the public body’s procedure described in ORS 192.440 as soon**

1 as practicable and without unreasonable delay.

2 “(2) A public body’s response to a public records request is complete
3 when the public body:

4 “(a) Provides access to or copies of all requested records within the
5 possession or custody of the public body that the public body does not
6 assert are exempt from public disclosure, or explains where the re-
7 cords are already publicly available;

8 “(b) Asserts any exemptions from disclosure that the public body
9 believes apply to any requested records and, if the public body cites
10 ORS 192.502 (8) or (9), identifies the state or federal law that the public
11 body relied on in asserting the exemptions;

12 “(c) Complies with ORS 192.505;

13 “(d) To the extent that the public body is not the custodian of re-
14 cords that have been requested, provides a written statement to that
15 effect;

16 “(e) To the extent that state or federal law prohibits the public body
17 from acknowledging whether any requested record exists or that ac-
18 knowledging whether a requested record exists would result in the loss
19 of federal benefits or imposition of another sanction, provides a writ-
20 ten statement to that effect, citing the state or federal law that the
21 public body relies on, unless the written statement itself would violate
22 state or federal law; and

23 “(f) If the public body asserts that one or more requested records
24 are exempt from public disclosure, includes a statement that the re-
25 quester may seek review of the public body’s determination pursuant
26 to ORS 192.450, 192.460, 192.465, 192.470, 192.480 and 192.490.

27 “(3)(a) If a public body has informed a requester of a fee permitted
28 under ORS 192.440 (4), the obligation of the public body to complete its
29 response to the request is suspended until the requester has paid the
30 fee, the fee has been waived by the public body pursuant to ORS 192.440

1 (5) or the fee otherwise has been ordered waived.

2 “(b) If the requester fails to pay the fee within 60 days of the date
3 on which the public body informed the requester of the fee, or fails to
4 pay the fee within 60 days of the date on which the public body in-
5 formed the requester of the denial of the fee waiver, the public body
6 shall close the request.

7 “(4)(a) A public body may request additional information or clarifi-
8 cation from a requester of public records for the purpose of expediting
9 the public body’s response to the request. If the public body has re-
10 quested additional information or clarification in good faith, the public
11 body’s obligation to further complete its response to the request is
12 suspended until the requester provides the requested information or
13 clarification or affirmatively declines to provide that information or
14 clarification.

15 “(b) If the requester fails to respond within 60 days to a good faith
16 request from the public body for information or clarification, the
17 public body shall close the request.

18 “(5) As soon as reasonably possible but not later than 10 business
19 days after the date by which a public body is required to acknowledge
20 receipt of the request under ORS 192.440, a public body shall:

21 “(a) Complete its response to the public records request; or

22 “(b) Provide a written statement that the public body is still pro-
23 cessing the request and a reasonable estimated date by which the
24 public body expects to complete its response based on the information
25 currently available.

26 “(6) The time periods established by ORS 192.440 and subsection (5)
27 of this section do not apply to a public body if compliance would be
28 impracticable because:

29 “(a) The staff or volunteers necessary to complete a response to the
30 public records request are unavailable;

1 **“(b) Compliance would demonstrably impede the public body’s abil-**
2 **ity to perform other necessary services; or**

3 **“(c) Of the volume of public records requests being simultaneously**
4 **processed by the public body.**

5 **“(7) For purposes of this section, staff members or volunteers who**
6 **are on leave or are not scheduled to work are considered to be una-**
7 **vailable.**

8 **“(8) A public body that cannot comply with the time periods estab-**
9 **lished by ORS 192.440 and subsection (5) of this section for a reason**
10 **listed in subsection (6) of this section shall, as soon as practicable and**
11 **without unreasonable delay, acknowledge a public records request and**
12 **complete the response to the request.**

13 **“SECTION 6. (1) A person who has submitted a written public re-**
14 **ords request in compliance with a public body’s policy may seek re-**
15 **view of the following, in the same manner as a person petitions when**
16 **inspection of a public record is denied under ORS 192.410 to 192.505:**

17 **“(a) The failure of a public body to provide the response required**
18 **by section 5 of this 2017 Act within the prescribed period. A failure of**
19 **the public body to timely respond shall be treated as a denial of the**
20 **request unless the public body demonstrates that compliance was not**
21 **required under section 5 of this 2017 Act.**

22 **“(b) An estimate of time provided by a public body pursuant to**
23 **section 5 of this 2017 Act, if the person believes that the estimated**
24 **time frame for the response is unreasonably long and will result in**
25 **undue delay of disclosure.**

26 **“(c) Any other instance in which the person believes that the public**
27 **body has failed to comply with section 5 of this 2017 Act.**

28 **“(2) Except as provided in subsection (3) of this section, the Attor-**
29 **ney General, the district attorney and the court have the same au-**
30 **thority with respect to petitions under this section as when inspection**

1 of a public record is denied.

2 “(3) If the Attorney General, district attorney or a court grants a
3 petition filed under this section, the order granting the petition may
4 require disclosure of nonexempt material responsive to the request
5 within seven days, or within any other period that the Attorney Gen-
6 eral, district attorney or court concludes is appropriate to comply with
7 section 5 of this 2017 Act.

8 “SECTION 7. Sections 2, 5 and 6 of this 2017 Act and the amend-
9 ments to ORS 192.410 and 192.440 by sections 3 and 4 of this 2017 Act
10 apply to public records requests made on or after the effective date
11 of this 2017 Act.

12 “SECTION 8. (1) The Attorney General shall maintain and regularly
13 update a catalog of exemptions created by Oregon statute from the
14 disclosure requirements of ORS 192.410 to 192.505. The catalog must
15 be as comprehensive as reasonably possible and must be freely avail-
16 able to the public in an electronic format that facilitates sorting and
17 searching of the catalog.

18 “(2) The catalog required by subsection (1) of this section must in-
19 clude the following information for each exemption:

20 “(a) A citation to the Oregon statute or statutes creating the ex-
21 emption from the disclosure requirements of ORS 192.410 to 192.505;

22 “(b) The relevant text of each statute creating the exemption;

23 “(c) If the exemption has been construed by a decision of the
24 Oregon Supreme Court or Court of Appeals, a citation to that decision;

25 “(d) To the extent that the exemption is specific to a particular
26 public body or particular types of public bodies, a description of the
27 public body or bodies to which the exemption relates; and

28 “(e) Additional information as the Attorney General deems appro-
29 priate.

30 “(3) To help ensure that the catalog required by subsection (1) of

1 **this section is as comprehensive as possible:**

2 **“(a) The Legislative Counsel shall provide the Attorney General**
3 **with an electronic copy of any Act passed by the Legislative Assembly**
4 **that, in the judgment of the Legislative Counsel, creates an exemption**
5 **from the disclosure requirements of ORS 192.410 to 192.505; and**

6 **“(b) When a district attorney issues an order pursuant to ORS**
7 **192.460, the district attorney shall send the Attorney General an elec-**
8 **tronic copy of that order.**

9 **“(4) The purpose of the catalog required by subsection (1) of this**
10 **section is to assist public officials and members of the public in as-**
11 **certaining what information is exempt from the public disclosure re-**
12 **quirements of ORS 192.410 to 192.505. The catalog is not intended to**
13 **provide legal advice to public bodies or to members of the public.**

14 **“(5) A public body may assert that an Oregon statute exempts a**
15 **public record in the custody of the public body from disclosure even**
16 **if that statute is not listed in the catalog or the catalog does not in-**
17 **clude that public body in the catalog’s description of the public bodies**
18 **to which that exemption applies.**

19 **“SECTION 9. (1) A public body, including a public official, public**
20 **employee, custodian of public records or other public body that dis-**
21 **discloses public records, is not liable for any loss or damage based on the**
22 **disclosure if the public body, public official, public employee, custodian**
23 **or other public body acts in good faith to comply or attempt to comply**
24 **with the disclosure requirements of ORS 192.410 to 192.505.**

25 **“(2) A public body that discloses any information or record in re-**
26 **sponse to a written request for public records under ORS 192.410 to**
27 **192.505 that is privileged under ORS 40.225 to 40.295 does not waive its**
28 **right to assert the applicable privilege to prevent the introduction of**
29 **the information or record as evidence pursuant to ORS 40.225 to 40.295.**

30 **“SECTION 10. ORS 40.280 is amended to read:**

1 “40.280. A person upon whom ORS 40.225 to 40.295 confer a privilege
2 against disclosure of the confidential matter or communication waives the
3 privilege if the person or the person’s predecessor while holder of the privi-
4 lege voluntarily discloses or consents to disclosure of any significant part
5 of the matter or communication. This section does not apply if the disclosure
6 is itself a privileged communication. Voluntary disclosure does not occur
7 with the mere commencement of litigation or, in the case of a deposition
8 taken for the purpose of perpetuating testimony, until the offering of the
9 deposition as evidence. Voluntary disclosure does not occur when represen-
10 tatives of the news media are allowed to attend executive sessions of the
11 governing body of a public body as provided in ORS 192.660 (4), or when
12 representatives of the news media disclose information after the governing
13 body has prohibited disclosure of the information under ORS 192.660 (4).
14 **Voluntary disclosure does not occur when a public body, as defined in**
15 **ORS 192.410, discloses information or records in response to a written**
16 **request for public records made under ORS 192.410 to 192.505.** Voluntary
17 disclosure does occur, as to psychotherapists in the case of a mental or
18 emotional condition and physicians in the case of a physical condition upon
19 the holder’s offering of any person as a witness who testifies as to the con-
20 dition.

21 **“SECTION 11.** ORS 287A.350 is amended to read:

22 “287A.350. The records of registered bond ownership, whether maintained
23 by a public body or otherwise, are not public records within the meaning of
24 ORS 192.410 [(4)].”.

25
