

## HB 2353 Fact Sheet

**Summary:** Oregon records law is extremely government-friendly in its timeliness requirements, but agencies face zero consequence for undue delays. Meanwhile, requesters — the public — bear the cost of enforcing the law. Below are some facts to debunk some of the concerns that have been raised about this bill, which allows token accountability for delays:

**Claim:** HB 2353 is a 'one-size-fits-all' law; small jurisdictions could suffer.

**Reality:** HB 2353 makes no change to the very flexible, agency-size-and-workload-dependent standard in current Oregon records law. That standard calls merely for a good-faith, reasonable effort by agencies given their fiscal and staff constraints. The ORS 192.407 language that this bill modifies explicitly and repeatedly refers to 192.329, i.e. the "safety valve" that local governments helped craft and that lawmakers overwhelmingly approved:

- (6) The time periods established by ORS 192.324 (Copies or inspection of public records) and subsection (5) of this section do not apply to a public body if compliance would be impracticable because:
- (a) The staff or volunteers necessary to complete a response to the public records request are unavailable;
  - (b) Compliance would demonstrably impede the public body's ability to perform other necessary services; or
  - (c) Of the volume of public records requests being simultaneously processed by the public body.
- (7) For purposes of this section, staff members or volunteers who are on leave or are not scheduled to work are considered to be unavailable.

**Claim:** HB 2353 "does not provide a clear timeline" or guidance to DAs.

**Reality:** The standards for what constitutes undue delay were crafted by a consensus-based AG-run task force and work group in which local governments were well represented and had veto power. Oregon law's very forgiving standard of good-faith reasonable effort reflects that local governments have opposed a clear, hard timeline. Other states and the federal government have clear, hard statutory-response deadlines.

**Claim:** An undue-delay finding doesn't allow for an appeal or due process.

**Reality:** The longstanding Oregon system in which DAs or the Attorney General referee disputes, often informally, is like a "hearing by affidavit," in which both sides submit written arguments, and then can respond to each other's arguments. The system is highly efficient in saving money and time while providing citizens a third-party remedy that avoids costly litigation. The result can be appealed to a judge.

**Claim:** Creates a 'profit motive;' will result in frivolous requests, complaints.

**Reality:** Under this bill a \$200 fine (less than a speeding ticket) could only be possible for requesters who (a) are confirmed to have been subjected to an undue delay under the current law's forgiving standard, (b) have engaged in the effort necessary to submit a petition to the DA or AG, and (c) who, after a fact-finding process, are deemed by the DA/AG to deserve compensation based on government's failure to comply with the law.

- The potential \$200 overall penalty was proposed to address LOC concern over the \$100-a-day-plus-attorney-fees system in Washington state. As amended, HB 2353 does not include attorney fees. Similarly, federal FOIA has a stronger standard than this bill: failure to meet statutory-response deadlines requires the agency to, on its own, waive all processing fees.

- Under this bill, an undue-delay finding by a DA or AG does not require a penalty be issued. Penalty options available are: a) no penalty, b) a fee reduction, c) a fee waiver, and/or d) a \$200 fine to compensate the requester for the time and effort spent having to enforce Oregon's government-friendly timeliness requirements.

- The option of fee reduction/waiver was added to HB 2353 because DAs wanted to be able to choose that instead of a fine. If a DA chooses to penalize an agency, SPJ believes fee reduction is the likeliest outcome.

**Claim:** The bill will change the relationship between cities and DAs.

**Reality:** Appeals of delay to DAs or the AG are a tiny portion of the total appeals they resolve. In that tiny portion of cases, a small potential fine, fee reduction or waiver is unlikely to alter longstanding relationships between public servants. Oregon's system incentivizes ethical communication between people in the public interest; if anything, HB 2353 reinforces that.

*Contact: Nick Budnick, Oregon Territory SPJ, [spjoregon@gmail.com](mailto:spjoregon@gmail.com).*