

House Bill 2136

Sponsored by Representative MANNIX (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Restricts public body from imposing fee for public record if public body maintains record in electronic form, requester agrees to accept record in electronic form and record is retrievable by public body without need to conduct archival search for record. Establishes presumption that fee restriction applies to requested record unless public body can document extraordinary need for public body's staff to be involved in retrieval and preparation for disclosure of public record.

A BILL FOR AN ACT

1
2 Relating to public record fees; amending ORS 192.324.

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

4 **SECTION 1.** ORS 192.324 is amended to read:

5 192.324. (1) A public body that is the custodian of any public record that a person has a right
6 to inspect shall give the person, upon receipt of a written request:

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

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

9 (2) If an individual who is identified in a public body's procedure described in subsection (7)(a)
10 of this section receives a written request to inspect or receive a copy of a public record, the public
11 body shall within five business days after receiving the request acknowledge receipt of the request
12 or complete the public body's response to the request. An acknowledgment under this subsection
13 must:

14 (a) Confirm that the public body is the custodian of the requested record;

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

16 (c) Notify the requester that the public body is uncertain whether the public body is the custo-
17 dian of the requested record.

18 (3) If the public record is maintained in a machine readable or electronic form, the public body
19 shall provide a copy of the public record in the form requested, if available. If the public record is
20 not available in the form requested, the public body shall make the public record available in the
21 form in which the public body maintains the public record.

22 (4)(a) The public body may establish fees reasonably calculated to reimburse the public body for
23 the public body's actual cost of making public records available, including costs for summarizing,
24 compiling or tailoring the public records, either in organization or media, to meet the request.

25 (b) The public body may include in a fee established under paragraph (a) of this subsection the
26 cost of time spent by an attorney for the public body in reviewing the public records, redacting
27 material from the public records or segregating the public records into exempt and nonexempt re-
28 cords. The public body may not include in a fee established under paragraph (a) of this subsection
29 the cost of time spent by an attorney for the public body in determining the application of the pro-
30 visions of ORS 192.311 to 192.478.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (c) The public body may not establish a fee greater than \$25 under this section unless the public
 2 body first provides the requester with a written notification of the estimated amount of the fee and
 3 the requester confirms that the requester wants the public body to proceed with making the public
 4 record available.

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

9 **(e) Notwithstanding paragraphs (a) to (d) of this subsection, a public body may not charge**
 10 **a fee under this section if:**

11 **(A) The public body has custody of the requested record in electronic form;**

12 **(B) The requester has agreed to accept an electronic form of the requested record; and**

13 **(C) The record is available without the public body needing to conduct an archival search**
 14 **to retrieve the requested record.**

15 **(f) When a public body has custody of a public record in electronic form and the re-**
 16 **quester has agreed to accept the record in electronic form, the restriction on the public body**
 17 **imposing a fee for the record is presumed to apply unless the public body can document an**
 18 **extraordinary need for the public body's staff to be involved in the retrieval or preparation**
 19 **of the record for disclosure to the requester.**

20 (5) The custodian of a public record may furnish copies without charge or at a substantially
 21 reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest
 22 because making the record available primarily benefits the general public.

23 (6) A requester who believes that there has been an unreasonable denial of a fee waiver or fee
 24 reduction may petition the Attorney General or the district attorney in the same manner as a re-
 25 quester who petitions when inspection of a public record is denied under ORS 192.311 to 192.478.
 26 The Attorney General, the district attorney and the court have the same authority in instances
 27 when a fee waiver or reduction is denied as when inspection of a public record is denied.

28 (7) A public body shall make available to the public a written procedure for making public re-
 29 cords requests that includes:

30 (a) The name of one or more individuals within the public body to whom public records requests
 31 may be sent, with addresses; and

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

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

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