

Requested by Representative NEARMAN

**PROPOSED AMENDMENTS TO
HOUSE BILL 4130**

1 On page 2 of the printed bill, delete lines 43 through 45 and delete page
2 3.

3 On page 4, delete lines 1 through 36 and insert:

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

5 “192.440. (1) The custodian of any public record that a person has a right
6 to inspect shall give the person, upon request:

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

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

10 “(2) If a person makes a written request to inspect a public record or to
11 receive a copy of a public record, the public body receiving the request shall
12 respond [*as soon as practicable and without unreasonable delay*] **within five**
13 **business days of receipt of the request.** The public body may request ad-
14 ditional information or clarification from the requester for the purpose of
15 expediting the public body’s response to the request. The response of the
16 public body **must be in a standard form**, must acknowledge receipt of the
17 request and must include one of the following:

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

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

1 “(c) A statement that the public body is the custodian of at least some
2 of the requested public records, an estimate of the time the public body re-
3 quires before the public records may be inspected or copies of the records
4 will be provided and an estimate of the fees that the requester must pay
5 under subsection [(4)] (6) of this section as a condition of receiving the
6 public records.

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

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

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

19 **“(3) A public body must within 30 days of receipt of the request:**

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

22 **“(b) Claim an exemption from disclosure under ORS 192.410 to**
23 **192.505 with respect to requested records and explain with specificity**
24 **the reason the exemption applies to the requested records; or**

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

30 **“(4) If the public body does not fulfill the request within the time**

1 **allowed under subsection (3) of this section, the public body shall pay**
2 **the sum of \$100 to the requester for each day that the public body does**
3 **not fulfill the request.**

4 “[3] (5) If the public record is maintained in a machine readable or
5 electronic form, the custodian shall provide a copy of the public record in
6 the form requested, if available. If the public record is not available in the
7 form requested, the custodian shall make the public record available in the
8 form in which the custodian maintains the public record.

9 “[4(a)] (6)(a) The public body may establish fees reasonably calculated
10 to reimburse the public body for the public body’s actual cost of making
11 public records available, including costs for summarizing, compiling or tai-
12 loring the public records, either in organization or media, to meet the
13 person’s request.

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

21 **“(c) Notwithstanding paragraph (a) or (b) of this subsection, a**
22 **public body with 10 or more full-time equivalent employees may not**
23 **establish fees under this subsection in which a component of the fee**
24 **is the time of staff engaged in responding to the request that is cal-**
25 **culated at more than \$30 per hour.**

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

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

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

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

14 “[*6*] (8) A person who believes that there has been an unreasonable de-
15 nial of a fee waiver or fee reduction may petition the Attorney General or
16 the district attorney in the same manner as a person petitions when in-
17 spection of a public record is denied under ORS 192.410 to 192.505. The At-
18 torney General, the district attorney and the court have the same authority
19 in instances when a fee waiver or reduction is denied as it has when in-
20 spection of a public record is denied.

21 “[*7*] (9) A public body shall make available to the public a written pro-
22 cedure for making public record requests that includes:

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

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

27 “[*8*] (10) This section does not apply to signatures of individuals sub-
28 mitted under ORS chapter 247 for purposes of registering to vote as provided
29 in ORS 247.973.”.

30 On page 7, line 36, delete “(5)” and insert “(6)”.

1 On page 8, line 5, delete “(5) to (7)” and insert “(6) to (8)”.

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