

House Bill 2455

Sponsored by Representative PARRISH; Representative NEARMAN (Presession 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**.

Requires public bodies to establish public records retention schedules that require minimum three-year retention of public records.

Modifies definition of "state agency" for public records law purposes.

Requires public bodies to respond to public records request within seven days of request and at seven-day intervals thereafter until complete disposition of request. Waives fees public body would have received if complete disposition of request has not been made within three weeks of request and treats request as denied if complete disposition has not been made within six weeks of request.

Establishes alternative method for determining fees public bodies may charge public records requesters. Requires public body to charge lesser of fee determined under existing law or under alternative method.

Requires public body that creates or retains public records on social media, that sends public record through text messaging or that sends public records using electronic mail addresses, domain of which is not owned by public body, to store copies of records on storage equipment owned or operated by public body within 30 days of creation or retention of record. Authorizes Attorney General to impose civil penalties for violation of storage requirements.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public records; creating new provisions; amending ORS 147.421, 192.108, 192.410, 192.440
3 and 802.183; and declaring an emergency.

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

5 **SECTION 1.** ORS 192.108 is amended to read:

6 192.108. (1) Each state agency or political subdivision, **including the Legislative Assembly,**
7 shall maintain a public record or accurate copy of a public record in accordance with a retention
8 schedule authorized under ORS 192.018 or 192.105, without regard to the technology or medium used
9 to create or communicate the record.

10 **(2) Any retention schedule adopted by a state agency or political subdivision, including**
11 **the Legislative Assembly, shall require the retention of public records for a minimum of**
12 **three years.**

13 **SECTION 2.** ORS 192.410 is amended to read:

14 192.410. As used in ORS 192.410 to 192.505:

15 (1) "Custodian" means:

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

17 (b) A public body mandated, directly or indirectly, to create, maintain, care for or control a
18 public record. "Custodian" does not include a public body that has custody of a public record as
19 an agent of another public body that is the custodian unless the public record is not otherwise
20 available.

21 (2) "Person" includes any natural person, corporation, partnership, firm, association or member
22 or committee of the Legislative Assembly.

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 (3) "Public body" includes every state officer, agency, department, division, bureau, board and
 2 commission; every county and city governing body, school district, special district, municipal cor-
 3 poration, and any board, department, commission, council, or agency thereof; and any other public
 4 agency of this state.

5 (4)(a) "Public record" includes any writing that contains information relating to the conduct of
 6 the public's business, including but not limited to court records, mortgages, and deed records, pre-
 7 pared, owned, used or retained by a public body regardless of physical form or characteristics.

8 (b) "Public record" does not include any writing that does not relate to the conduct of the
 9 public's business and that is contained on a privately owned computer.

10 (5) "State agency" means any state officer, department, board, commission or court created by
 11 the Constitution or statutes of this state [*but does not include the Legislative Assembly or its mem-
 12 bers, committees, officers or employees insofar as they are exempt under section 9, Article IV of the
 13 Oregon Constitution*].

14 (6) "Writing" means handwriting, typewriting, printing, photographing and every means of re-
 15 cording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all pa-
 16 pers, maps, files, facsimiles or electronic recordings.

17 **SECTION 3.** ORS 192.440 is amended to read:

18 192.440. (1) The custodian of any public record that a person has a right to inspect shall give
 19 the person, upon request:

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

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

22 (2) If a person makes a written request to inspect a public record or to receive a copy of a
 23 public record, the public body receiving the request shall respond as soon as practicable and without
 24 unreasonable delay. The public body may request additional information or clarification from the
 25 requester for the purpose of expediting the public body's response to the request. **The public body
 26 must, however, respond within seven days of the initial receipt of the request.** The response
 27 of the public body must acknowledge receipt of the request and must include one of the following:

28 (a) A statement that the public body does not possess, or is not the custodian of, the public re-
 29 cord.

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

32 (c) A statement that the public body is the custodian of at least some of the requested public
 33 records, an estimate of the time the public body requires before the public records may be inspected
 34 or copies of the records will be provided and an estimate of the fees that the requester must pay
 35 under subsection [(4)] (6) of this section **and section 4 of this 2017 Act** as a condition of receiving
 36 the public records.

37 (d) A statement that the public body is the custodian of at least some of the requested public
 38 records and that an estimate of the time and fees for disclosure of the public records will be pro-
 39 vided by the public body within a reasonable time.

40 (e) A statement that the public body is uncertain whether the public body possesses the public
 41 record and that the public body will search for the record and make an appropriate response as soon
 42 as practicable.

43 (f) A statement that state or federal law prohibits the public body from acknowledging whether
 44 the record exists or that acknowledging whether the record exists would result in the loss of federal
 45 benefits or other sanction. A statement under this paragraph must include a citation to the state

1 or federal law relied upon by the public body.

2 **(3) If the response provided by the public body under paragraph (b) of this subsection**
 3 **does not constitute a complete disposition of the request, the public body shall thereafter**
 4 **provide a written response each seven-day period thereafter, until a complete disposition of**
 5 **the request has been made, that:**

6 **(a) Explains the activities of the public body, with regard to the request, in the inter-**
 7 **vening period since the last written statement the public body gave the requester; and**

8 **(b)(A) Provides the requested public records to the requester or affords the requester an**
 9 **opportunity to inspect all or a portion of the requested public records; or**

10 **(B) Sets forth with particularity each exemption from disclosure the public body is**
 11 **claiming with respect to records that are the subject of the request.**

12 **(4) Notwithstanding subsection (3) of this section, if the public body has not provided**
 13 **copies of all public records sought by a requester, permitted the requester to inspect all**
 14 **public records sought by the requester or claimed exemption from disclosure with respect**
 15 **to all records sought by the requester, or some combination of disclosure and exemption with**
 16 **respect to all records sought by the requester:**

17 **(a) Within three weeks after the date the request was made, all fees that the public body**
 18 **would be entitled to charge under subsection (6) of this section and section 4 of this 2017 Act**
 19 **are waived; and**

20 **(b) Within six weeks after the date the request was made, the failure of the public body**
 21 **to achieve a complete disposition of the request shall be treated as a denial of the request**
 22 **for purposes of ORS 192.450, 192.460 or 192.480.**

23 *[(3)] (5) If the public record is maintained in a machine readable or electronic form, the custo-*
 24 *dian shall provide a copy of the public record in the form requested, if available. If the public record*
 25 *is not available in the form requested, the custodian shall make the public record available in the*
 26 *form in which the custodian maintains the public record.*

27 *[(4)(a)] (6)(a) **The public body may establish fees as prescribed in section 4 of this 2017 Act.***
 28 *[The public body may establish fees reasonably calculated to reimburse the public body for the public*
 29 *body's actual cost of making public records available, including costs for summarizing, compiling or*
 30 *tailoring the public records, either in organization or media, to meet the person's request.]*

31 *[(b) The public body may include in a fee established under paragraph (a) of this subsection the*
 32 *cost of time spent by an attorney for the public body in reviewing the public records, redacting material*
 33 *from the public records or segregating the public records into exempt and nonexempt records. The*
 34 *public body may not include in a fee established under paragraph (a) of this subsection the cost of time*
 35 *spent by an attorney for the public body in determining the application of the provisions of ORS*
 36 *192.410 to 192.505.]*

37 *[(c) The public body may not establish a fee greater than \$25 under this section unless the public*
 38 *body first provides the requestor with a written notification of the estimated amount of the fee and the*
 39 *requestor confirms that the requestor wants the public body to proceed with making the public record*
 40 *available.]*

41 *[(d)] (b) [Notwithstanding paragraphs (a) to (c) of this subsection,] **Notwithstanding section 4***
 42 ***of this 2017 Act,** when the public records are those filed with the Secretary of State under ORS*
 43 *chapter 79 or ORS 80.100 to 80.130, the fees for furnishing copies, summaries or compilations of the*
 44 *public records are those established by the Secretary of State by rule, under ORS chapter 79 or ORS*
 45 *80.100 to 80.130.*

1 [(5)] (7) The custodian of any public record may furnish copies without charge or at a substan-
 2 tially reduced fee if the custodian determines that the waiver or reduction of fees is in the public
 3 interest because making the record available primarily benefits the general public.

4 [(6)] (8) A person who believes that there has been an unreasonable denial of a fee waiver or
 5 fee reduction may petition the Attorney General or the district attorney in the same manner as a
 6 person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The
 7 Attorney General, the district attorney and the court have the same authority in instances when a
 8 fee waiver or reduction is denied as it has when inspection of a public record is denied.

9 [(7)] (9) A public body shall make available to the public a written procedure for making public
 10 record requests that includes:

11 (a) The name of one or more persons to whom public record requests may be sent, with ad-
 12 dresses; and

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

15 [(8)] (10) This section does not apply to signatures of individuals submitted under ORS chapter
 16 247 for purposes of registering to vote as provided in ORS 247.973.

17 **SECTION 4. (1) A public body may establish and impose fees for providing copies of public**
 18 **records, or for making public records available for inspection, in response to a person's re-**
 19 **quest.**

20 (2) Fees established and imposed under this section may not exceed the lesser of:

21 (a)(A) Five cents per page for physical copies of public records or per standard page-size
 22 of electronic records that are capable of being reproduced without electronic reformatting;

23 (B) Fifty cents per photograph reproduced on photographic paper;

24 (C) Twenty-five cents per minute of audio or video recording;

25 (D) One cent per kilobyte of electronic records not otherwise described in subparagraphs
 26 (A) to (C) of this paragraph; or

27 (E) If the public record is in a format that is not listed in subparagraphs (A) to (D) of
 28 this paragraph, then as determined under paragraph (b) of this subsection;

29 (b) The public body's actual cost of making public records available, including costs for
 30 summarizing, compiling or tailoring the public records, either in organization or media, to
 31 meet the person's request; or

32 (c) \$100.

33 (3) The public body may include in a fee established under subsection (2)(b) of this section
 34 the cost of time spent by an attorney for the public body in reviewing the public records,
 35 redacting material from the public records or segregating the public records into exempt and
 36 nonexempt records. The public body may not include in a fee established under subsection
 37 (2)(b) of this section the cost of time spent by an attorney for the public body in determining
 38 the application of the provisions of ORS 192.410 to 192.505.

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

43 (b) A requester may in writing waive the requirement that the requester be provided a
 44 written estimate of fees that exceed \$25 if the requester wishes to expedite the public body's
 45 processing of the requester's request to inspect public records.

1 **SECTION 5.** (1) Each public body that creates or retains a public record on social media,
 2 sends a public record through text messaging or sends a public record through use of an
 3 electronic mail address, the domain of which is not owned by the public body, must store a
 4 copy of the record on a server or other storage device owned or operated by the public body
 5 within 30 days of the creation or retention of the record.

6 (2) As used in this section, “social media” means forms of electronic communication
 7 through which users create online communities in order to share information, messages or
 8 other content.

9 **SECTION 6.** (1) In addition to any other liability or penalty provided by law, the Attorney
 10 General may impose a civil penalty on any person for violation of section 5 of this 2017 Act.

11 (2)(a) After public hearing, the Attorney General by rule shall adopt a schedule estab-
 12 lishing the civil penalty that may be imposed under this section. However, the civil penalty
 13 may not exceed \$500 for each violation.

14 (b) The penalties assessed under subsection (1) of this section may not exceed an aggre-
 15 gate of \$5,000 on any one person in a one-year period.

16 (3) A civil penalty imposed under this section may be remitted or reduced upon such
 17 terms as the Attorney General considers proper and consistent with the purposes of ORS
 18 192.410 to 192.505.

19 (4) Civil penalties under this section shall be imposed in the manner provided in ORS
 20 183.745.

21 **SECTION 7.** Sections 4, 5 and 6 of this 2017 Act are added to and made a part of ORS
 22 192.410 to 192.505.

23 **SECTION 8.** ORS 147.421 is amended to read:

24 147.421. (1) If a public body is the custodian of any of the following information, upon the re-
 25 quest of the victim, the public body shall provide to the victim any of the following information of
 26 which it is the custodian and that is about the defendant or convicted criminal:

- 27 (a) The conviction and sentence;
- 28 (b) Criminal history;
- 29 (c) Imprisonment; and
- 30 (d) Future release from physical custody.

31 (2) A public body, in its discretion, may provide the requested information by furnishing the
 32 victim with copies of public records. The public body may charge the victim [*its actual cost*] a fee
 33 for making public records available as provided in ORS 192.440 [(4)] **(6) and section 4 of this 2017**
 34 **Act.**

35 (3) As used in this section:

36 (a) “Criminal history” means a description of the prior arrests, convictions and sentences of the
 37 person.

38 (b) “Future release” means the projected or scheduled date of release of the person from con-
 39 finement, the name and location of the correctional facility from which the person is to be released
 40 and the community where the person is scheduled to reside upon release.

41 (c) “Imprisonment” means the name and location of the correctional facility in which the person
 42 is confined.

43 (d) “Public body” has the meaning given that term in ORS 192.410.

44 **SECTION 9.** ORS 802.183 is amended to read:

45 802.183. (1) The Department of Transportation may establish **and impose** fees [*reasonably cal-*

1 *culated to reimburse it for its actual cost in] for making personal information available to a person*
2 *or government agency authorized under ORS 802.179 to obtain the information. Fees established*
3 *under this subsection are subject to the provisions of ORS 192.440 [(4) to (6)] (6) to (8) and section*
4 **4 of this 2017 Act.**

5 (2) The department may adopt rules specifying conditions that must be met by a person or gov-
6 ernment agency requesting personal information under ORS 802.179. Such conditions may include
7 but need not be limited to:

8 (a) Providing reasonable assurance of the identity of the requester;

9 (b) Providing reasonable assurance of the uses to which the personal information will be put, if
10 applicable;

11 (c) Showing that the individual whose personal information is to be disclosed has given permis-
12 sion for the disclosure, if permission is required; and

13 (d) Submitting a written request for the personal information in a form prescribed by the de-
14 partment.

15 **SECTION 10. This 2017 Act being necessary for the immediate preservation of the public**
16 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
17 **on its passage.**

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