

Requested by Representative GOMBERG

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2841**

1 On page 1 of the printed bill, delete lines 4 through 29 and delete pages  
2 2 through 8 and insert:

3 **“SECTION 1. Section 2 of this 2019 Act is added to and made a part  
4 of ORS chapter 496.**

5 **“SECTION 2. (1) The State Department of Fish and Wildlife may  
6 refuse to disclose information described in subsection (3) of this sec-  
7 tion regarding the habitat, location or population of a fish or wildlife  
8 species that is:**

9 **“(a) A sensitive species as defined by department rule;**

10 **“(b) Listed by the federal government or by the State Fish and  
11 Wildlife Commission as a threatened species or endangered species;  
12 or**

13 **“(c) Under consideration by the commission for listing as a threat-  
14 ened species or endangered species.**

15 **“(2) The department may refuse to disclose information regarding  
16 the location or habitat of a fish or wildlife species or of an individual  
17 member or a population of a species if:**

18 **“(a) The species has value as a commercial species or game species,  
19 or has black market value;**

20 **“(b) There exists a history of harm to a local population of the  
21 species from malicious or unlawful behavior, accidental taking, dis-**

1 **turbance or harassment and the behavior or ecology of the species**  
2 **makes the species especially vulnerable to that harm;**

3 **“(c) There is a known demand for taking or harassing the species;**  
4 **or**

5 **“(d) The species has limited distribution and concentration or is an**  
6 **endemic species.**

7 **“(3) The department may refuse to disclose information about a**  
8 **species described in subsection (1) or (2) of this section that concerns:**

9 **“(a) Past, present or projected locations of individual members or**  
10 **populations of the species;**

11 **“(b) Past, present or projected habitat used by the species, or by**  
12 **individual members or a population of the species, during breeding,**  
13 **nesting, denning, migration, dispersal or other sensitive or vulnerable**  
14 **life stages;**

15 **“(c) Telemetry, radio frequency or other information concerning**  
16 **tracking or monitoring equipment or methods that have been used,**  
17 **are in use or are being considered for use;**

18 **“(d) Results or other specific information from the unpublished data**  
19 **and findings of research, monitoring or evaluation efforts conducted**  
20 **by the state or by an entity acting jointly with the state; or**

21 **“(e) Confidential information provided on a voluntary basis by pri-**  
22 **vate landowners or representatives of private landowners.**

23 **“(4) The department may disclose information withheld under sub-**  
24 **section (3) of this section to:**

25 **“(a) The federal government, a public body as defined in ORS**  
26 **174.109, a public utility or an accredited college or university;**

27 **“(b) Tribal governments;**

28 **“(c) Owners of, lessees of rights-of-way in or holders of easements**  
29 **on private land to which the information pertains; and**

30 **“(d) Resource management partners and stakeholders.**

1       “(5) The department shall require a recipient of information dis-  
2 closed under subsection (4) of this section to sign an agreement to  
3 maintain the confidentiality of the information.

4       “(6) A disclosure of information under subsection (4) of this section  
5 does not require that the department disclose the information to any  
6 other party.

7       “(7) Except as provided in this subsection, if the department dis-  
8 closes information described in this section relating to fish and wildlife  
9 management, the department shall ensure that the information is at  
10 a spatial and temporal scale that does not put an individual member  
11 or a population of a species at risk of harm. This subsection does not  
12 apply to a disclosure of information authorized under subsection (4)  
13 of this section.

14       “**SECTION 3.** ORS 192.345 is amended to read:

15       “192.345. The following public records are exempt from disclosure under  
16 ORS 192.311 to 192.478 unless the public interest requires disclosure in the  
17 particular instance:

18       “(1) Records of a public body pertaining to litigation to which the public  
19 body is a party if the complaint has been filed, or if the complaint has not  
20 been filed, if the public body shows that such litigation is reasonably likely  
21 to occur. This exemption does not apply to litigation which has been con-  
22 cluded, and nothing in this subsection shall limit any right or opportunity  
23 granted by discovery or deposition statutes to a party to litigation or po-  
24 tential litigation.

25       “(2) Trade secrets. ‘Trade secrets,’ as used in this section, may include,  
26 but are not limited to, any formula, plan, pattern, process, tool, mechanism,  
27 compound, procedure, production data, or compilation of information which  
28 is not patented, which is known only to certain individuals within an or-  
29 ganization and which is used in a business it conducts, having actual or  
30 potential commercial value, and which gives its user an opportunity to ob-

1 tain a business advantage over competitors who do not know or use it.

2 “(3) Investigatory information compiled for criminal law purposes. The  
3 record of an arrest or the report of a crime shall be disclosed unless and only  
4 for so long as there is a clear need to delay disclosure in the course of a  
5 specific investigation, including the need to protect the complaining party  
6 or the victim. Nothing in this subsection shall limit any right constitu-  
7 tionally guaranteed, or granted by statute, to disclosure or discovery in  
8 criminal cases. For purposes of this subsection, the record of an arrest or the  
9 report of a crime includes, but is not limited to:

10 “(a) The arrested person’s name, age, residence, employment, marital sta-  
11 tus and similar biographical information;

12 “(b) The offense with which the arrested person is charged;

13 “(c) The conditions of release pursuant to ORS 135.230 to 135.290;

14 “(d) The identity of and biographical information concerning both com-  
15 plaining party and victim;

16 “(e) The identity of the investigating and arresting agency and the length  
17 of the investigation;

18 “(f) The circumstances of arrest, including time, place, resistance, pursuit  
19 and weapons used; and

20 “(g) Such information as may be necessary to enlist public assistance in  
21 apprehending fugitives from justice.

22 “(4) Test questions, scoring keys, and other data used to administer a li-  
23 censing examination, employment, academic or other examination or testing  
24 procedure before the examination is given and if the examination is to be  
25 used again. Records establishing procedures for and instructing persons ad-  
26 ministering, grading or evaluating an examination or testing procedure are  
27 included in this exemption, to the extent that disclosure would create a risk  
28 that the result might be affected.

29 “(5) Information consisting of production records, sale or purchase records  
30 or catch records, or similar business records of a private concern or enter-

1   prise, required by law to be submitted to or inspected by a governmental  
2   body to allow it to determine fees or assessments payable or to establish  
3   production quotas, and the amounts of such fees or assessments payable or  
4   paid, to the extent that such information is in a form that would permit  
5   identification of the individual concern or enterprise. This exemption does  
6   not include records submitted by long term care facilities as defined in ORS  
7   442.015 to the state for purposes of reimbursement of expenses or determining  
8   fees for patient care. Nothing in this subsection shall limit the use that can  
9   be made of such information for regulatory purposes or its admissibility in  
10  any enforcement proceeding.

11       “(6) Information relating to the appraisal of real estate prior to its ac-  
12  quisition.

13       “(7) The names and signatures of employees who sign authorization cards  
14  or petitions for the purpose of requesting representation or decertification  
15  elections.

16       “(8) Investigatory information relating to any complaint filed under ORS  
17  659A.820 or 659A.825, until such time as the complaint is resolved under ORS  
18  659A.835, or a final order is issued under ORS 659A.850.

19       “(9) Investigatory information relating to any complaint or charge filed  
20  under ORS 243.676 and 663.180.

21       “(10) Records, reports and other information received or compiled by the  
22  Director of the Department of Consumer and Business Services under ORS  
23  697.732.

24       “(11) Information concerning the location of archaeological sites or ob-  
25  jects as those terms are defined in ORS 358.905, except if the governing body  
26  of an Indian tribe requests the information and the need for the information  
27  is related to that Indian tribe’s cultural or religious activities. This ex-  
28  emption does not include information relating to a site that is all or part  
29  of an existing, commonly known and publicized tourist facility or attraction.

30       “(12) A personnel discipline action, or materials or documents supporting

1 that action.

2 “(13) **Fish and wildlife** information:

3 “(a) Developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS  
4 496.192 and 564.100, regarding the habitat, location or population of any  
5 threatened species or endangered species[.]; **or**

6 “(b) **Described in section 2 of this 2019 Act.**

7 “(14) Writings prepared by or under the direction of faculty of public ed-  
8 ucational institutions, in connection with research, until publicly released,  
9 copyrighted or patented.

10 “(15) Computer programs developed or purchased by or for any public  
11 body for its own use. As used in this subsection, ‘computer program’ means  
12 a series of instructions or statements which permit the functioning of a  
13 computer system in a manner designed to provide storage, retrieval and ma-  
14 nipulation of data from such computer system, and any associated documen-  
15 tation and source material that explain how to operate the computer  
16 program. ‘Computer program’ does not include:

17 “(a) The original data, including but not limited to numbers, text, voice,  
18 graphics and images;

19 “(b) Analyses, compilations and other manipulated forms of the original  
20 data produced by use of the program; or

21 “(c) The mathematical and statistical formulas which would be used if the  
22 manipulated forms of the original data were to be produced manually.

23 “(16) Data and information provided by participants to mediation under  
24 ORS 36.256.

25 “(17) Investigatory information relating to any complaint or charge filed  
26 under ORS chapter 654, until a final administrative determination is made  
27 or, if a citation is issued, until an employer receives notice of any citation.

28 “(18) Specific operational plans in connection with an anticipated threat  
29 to individual or public safety for deployment and use of personnel and  
30 equipment, prepared or used by a public body, if public disclosure of the

1 plans would endanger an individual's life or physical safety or jeopardize a  
2 law enforcement activity.

3 “(19)(a) Audits or audit reports required of a telecommunications carrier.  
4 As used in this paragraph, ‘audit or audit report’ means any external or  
5 internal audit or audit report pertaining to a telecommunications carrier, as  
6 defined in ORS 133.721, or pertaining to a corporation having an affiliated  
7 interest, as defined in ORS 759.390, with a telecommunications carrier that  
8 is intended to make the operations of the entity more efficient, accurate or  
9 compliant with applicable rules, procedures or standards, that may include  
10 self-criticism and that has been filed by the telecommunications carrier or  
11 affiliate under compulsion of state law. ‘Audit or audit report’ does not mean  
12 an audit of a cost study that would be discoverable in a contested case pro-  
13 ceeding and that is not subject to a protective order; and

14 “(b) Financial statements. As used in this paragraph, ‘financial  
15 statement’ means a financial statement of a nonregulated corporation having  
16 an affiliated interest, as defined in ORS 759.390, with a telecommunications  
17 carrier, as defined in ORS 133.721.

18 “(20) The residence address of an elector if authorized under ORS 247.965  
19 and subject to ORS 247.967.

20 “(21) The following records, communications and information submitted  
21 to a housing authority as defined in ORS 456.005, or to an urban renewal  
22 agency as defined in ORS 457.010, by applicants for and recipients of loans,  
23 grants and tax credits:

24 “(a) Personal and corporate financial statements and information, in-  
25 cluding tax returns;

26 “(b) Credit reports;

27 “(c) Project appraisals, excluding appraisals obtained in the course of  
28 transactions involving an interest in real estate that is acquired, leased,  
29 rented, exchanged, transferred or otherwise disposed of as part of the project,  
30 but only after the transactions have closed and are concluded;

1 “(d) Market studies and analyses;

2 “(e) Articles of incorporation, partnership agreements and operating

3 agreements;

4 “(f) Commitment letters;

5 “(g) Project pro forma statements;

6 “(h) Project cost certifications and cost data;

7 “(i) Audits;

8 “(j) Project tenant correspondence requested to be confidential;

9 “(k) Tenant files relating to certification; and

10 “(L) Housing assistance payment requests.

11 “(22) Records or information that, if disclosed, would allow a person to:

12 “(a) Gain unauthorized access to buildings or other property;

13 “(b) Identify those areas of structural or operational vulnerability that

14 would permit unlawful disruption to, or interference with, services; or

15 “(c) Disrupt, interfere with or gain unauthorized access to public funds

16 or to information processing, communication or telecommunication systems,

17 including the information contained in the systems, that are used or operated

18 by a public body.

19 “(23) Records or information that would reveal or otherwise identify se-

20 curity measures, or weaknesses or potential weaknesses in security measures,

21 taken or recommended to be taken to protect:

22 “(a) An individual;

23 “(b) Buildings or other property;

24 “(c) Information processing, communication or telecommunication sys-

25 tems, including the information contained in the systems; or

26 “(d) Those operations of the Oregon State Lottery the security of which

27 are subject to study and evaluation under ORS 461.180 (6).

28 “(24) Personal information held by or under the direction of officials of

29 the Oregon Health and Science University or a public university listed in

30 ORS 352.002 about a person who has or who is interested in donating money



1 or property to the Oregon Health and Science University or a public uni-  
2 versity, if the information is related to the family of the person, personal  
3 assets of the person or is incidental information not related to the donation.

4 “(25) The home address, professional address and telephone number of a  
5 person who has or who is interested in donating money or property to a  
6 public university listed in ORS 352.002.

7 “(26) Records of the name and address of a person who files a report with  
8 or pays an assessment to a commodity commission established under ORS  
9 576.051 to 576.455, the Oregon Beef Council created under ORS 577.210 or the  
10 Oregon Wheat Commission created under ORS 578.030.

11 “(27) Information provided to, obtained by or used by a public body to  
12 authorize, originate, receive or authenticate a transfer of funds, including  
13 but not limited to a credit card number, payment card expiration date,  
14 password, financial institution account number and financial institution  
15 routing number.

16 “(28) Social Security numbers as provided in ORS 107.840.

17 “(29) The electronic mail address of a student who attends a public uni-  
18 versity listed in ORS 352.002 or Oregon Health and Science University.

19 “(30) The name, home address, professional address or location of a person  
20 that is engaged in, or that provides goods or services for, medical research  
21 at Oregon Health and Science University that is conducted using animals  
22 other than rodents. This subsection does not apply to Oregon Health and  
23 Science University press releases, websites or other publications circulated  
24 to the general public.

25 “(31) If requested by a public safety officer, as defined in ORS 181A.355:

26 “(a) The home address and home telephone number of the public safety  
27 officer contained in the voter registration records for the officer.

28 “(b) The home address and home telephone number of the public safety  
29 officer contained in records of the Department of Public Safety Standards  
30 and Training.

1       “(c) The name of the public safety officer contained in county real prop-  
2 erty assessment or taxation records. This exemption:

3       “(A) Applies only to the name of the public safety officer and any other  
4 owner of the property in connection with a specific property identified by the  
5 officer in a request for exemption from disclosure;

6       “(B) Applies only to records that may be made immediately available to  
7 the public upon request in person, by telephone or using the Internet;

8       “(C) Applies until the public safety officer requests termination of the  
9 exemption;

10       “(D) Does not apply to disclosure of records among public bodies as de-  
11 fined in ORS 174.109 for governmental purposes; and

12       “(E) May not result in liability for the county if the name of the public  
13 safety officer is disclosed after a request for exemption from disclosure is  
14 made under this subsection.

15       “(32) Unless the public records request is made by a financial institution,  
16 as defined in ORS 706.008, consumer finance company licensed under ORS  
17 chapter 725, mortgage banker or mortgage broker licensed under ORS  
18 86A.095 to 86A.198, or title company for business purposes, records described  
19 in paragraph (a) of this subsection, if the exemption from disclosure of the  
20 records is sought by an individual described in paragraph (b) of this sub-  
21 section using the procedure described in paragraph (c) of this subsection:

22       “(a) The home address, home or cellular telephone number or personal  
23 electronic mail address contained in the records of any public body that has  
24 received the request that is set forth in:

25       “(A) A warranty deed, deed of trust, mortgage, lien, deed of reconveyance,  
26 release, satisfaction, substitution of trustee, easement, dog license, marriage  
27 license or military discharge record that is in the possession of the county  
28 clerk; or

29       “(B) Any public record of a public body other than the county clerk.

30       “(b) The individual claiming the exemption from disclosure must be a

1 district attorney, a deputy district attorney, the Attorney General or an as-  
2 sistant attorney general, the United States Attorney for the District of  
3 Oregon or an assistant United States attorney for the District of Oregon, a  
4 city attorney who engages in the prosecution of criminal matters or a deputy  
5 city attorney who engages in the prosecution of criminal matters.

6 “(c) The individual claiming the exemption from disclosure must do so by  
7 filing the claim in writing with the public body for which the exemption from  
8 disclosure is being claimed on a form prescribed by the public body. Unless  
9 the claim is filed with the county clerk, the claim form shall list the public  
10 records in the possession of the public body to which the exemption applies.  
11 The exemption applies until the individual claiming the exemption requests  
12 termination of the exemption or ceases to qualify for the exemption.

13 “(33) The following voluntary conservation agreements and reports:

14 “(a) Land management plans required for voluntary stewardship agree-  
15 ments entered into under ORS 541.973; and

16 “(b) Written agreements relating to the conservation of greater sage  
17 grouse entered into voluntarily by owners or occupiers of land with a soil  
18 and water conservation district under ORS 568.550.

19 “(34) Sensitive business records or financial or commercial information  
20 of the State Accident Insurance Fund Corporation that is not customarily  
21 provided to business competitors. This exemption does not:

22 “(a) Apply to the formulas for determining dividends to be paid to em-  
23 ployers insured by the State Accident Insurance Fund Corporation;

24 “(b) Apply to contracts for advertising, public relations or lobbying ser-  
25 vices or to documents related to the formation of such contracts;

26 “(c) Apply to group insurance contracts or to documents relating to the  
27 formation of such contracts, except that employer account records shall re-  
28 main exempt from disclosure as provided in ORS 192.355 (35); or

29 “(d) Provide the basis for opposing the discovery of documents in liti-  
30 gation pursuant to the applicable rules of civil procedure.

1 “(35) Records of the Department of Public Safety Standards and Training  
2 relating to investigations conducted under ORS 181A.640 or 181A.870 (6),  
3 until the department issues the report described in ORS 181A.640 or 181A.870.

4 “(36) A medical examiner’s report, autopsy report or laboratory test report  
5 ordered by a medical examiner under ORS 146.117.

6 “(37) Any document or other information related to an audit of a public  
7 body, as defined in ORS 174.109, that is in the custody of an auditor or audit  
8 organization operating under nationally recognized government auditing  
9 standards, until the auditor or audit organization issues a final audit report  
10 in accordance with those standards or the audit is abandoned. This ex-  
11 emption does not prohibit disclosure of a draft audit report that is provided  
12 to the audited entity for the entity’s response to the audit findings.

13 “(38)(a) Personally identifiable information collected as part of an elec-  
14 tronic fare collection system of a mass transit system.

15 “(b) The exemption from disclosure in paragraph (a) of this subsection  
16 does not apply to public records that have attributes of anonymity that are  
17 sufficient, or that are aggregated into groupings that are broad enough, to  
18 ensure that persons cannot be identified by disclosure of the public records.

19 “(c) As used in this subsection:

20 “(A) ‘Electronic fare collection system’ means the software and hardware  
21 used for, associated with or relating to the collection of transit fares for a  
22 mass transit system, including but not limited to computers, radio commu-  
23 nication systems, personal mobile devices, wearable technology, fare instru-  
24 ments, information technology, data storage or collection equipment, or other  
25 equipment or improvements.

26 “(B) ‘Mass transit system’ has the meaning given that term in ORS  
27 267.010.

28 “(C) ‘Personally identifiable information’ means all information relating  
29 to a person that acquires or uses a transit pass or other fare payment me-  
30 dium in connection with an electronic fare collection system, including but

1 not limited to:

2 “(i) Customer account information, date of birth, telephone number,  
3 physical address, electronic mail address, credit or debit card information,  
4 bank account information, Social Security or taxpayer identification number  
5 or other identification number, transit pass or fare payment medium balances  
6 or history, or similar personal information; or

7 “(ii) Travel dates, travel times, frequency of use, travel locations, service  
8 types or vehicle use, or similar travel information.

9 “(39)(a) If requested by a civil code enforcement officer:

10 “(A) The home address and home telephone number of the civil code  
11 enforcement officer contained in the voter registration records for the offi-  
12 cer.

13 “(B) The name of the civil code enforcement officer contained in county  
14 real property assessment or taxation records. This exemption:

15 “(i) Applies only to the name of the civil code enforcement officer and  
16 any other owner of the property in connection with a specific property  
17 identified by the officer in a request for exemption from disclosure;

18 “(ii) Applies only to records that may be made immediately available to  
19 the public upon request in person, by telephone or using the Internet;

20 “(iii) Applies until the civil code enforcement officer requests termination  
21 of the exemption;

22 “(iv) Does not apply to disclosure of records among public bodies as de-  
23 fined in ORS 174.109 for governmental purposes; and

24 “(v) May not result in liability for the county if the name of the civil code  
25 enforcement officer is disclosed after a request for exemption from disclosure  
26 is made under this subsection.

27 “(b) As used in this subsection, ‘civil code enforcement officer’ means an  
28 employee of a public body, as defined in ORS 174.109, who is charged with  
29 enforcing laws or ordinances relating to land use, zoning, use of rights-of-  
30 way, solid waste, hazardous waste, sewage treatment and disposal or the

1 state building code.

2 “(40) Audio or video recordings, whether digital or analog, resulting from  
3 a law enforcement officer’s operation of a video camera worn upon the  
4 officer’s person that records the officer’s interactions with members of the  
5 public while the officer is on duty. When a recording described in this sub-  
6 section is subject to disclosure, the following apply:

7 “(a) Recordings that have been sealed in a court’s record of a court pro-  
8 ceeding or otherwise ordered by a court not to be disclosed may not be dis-  
9 closed.

10 “(b) A request for disclosure under this subsection must identify the ap-  
11 proximate date and time of an incident for which the recordings are re-  
12 quested and be reasonably tailored to include only that material for which  
13 a public interest requires disclosure.

14 “(c) A video recording disclosed under this subsection must, prior to dis-  
15 closure, be edited in a manner as to render the faces of all persons within  
16 the recording unidentifiable.

17 **“SECTION 4. (1) The Legislative Assembly intends that section 2**  
18 **of this 2019 Act and the amendments to ORS 192.345 by section 3 of this**  
19 **2019 Act apply retroactively to September 1, 2018. The Legislative As-**  
20 **sembly hereby validates any disclosure refusal by the State Depart-**  
21 **ment of Fish and Wildlife on or after September 1, 2018, and prior to**  
22 **the effective date of this 2019 Act regarding information described in**  
23 **section 2 of this 2019 Act or in the amendments to ORS 192.345 by**  
24 **section 3 of this 2019 Act.**

25 **“(2) Section 2 of this 2019 Act does not allow the department to**  
26 **withhold information in violation of a data sharing commitment or**  
27 **obligation, including but not limited to a commitment under a man-**  
28 **agement plan, entered into by the department prior to the effective**  
29 **date of this 2019 Act.”.**

30