



Oregon

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**To: The Honorable Jeff Golden, Chair
Senate Committee on Environmental and Natural Resources**

Senate Bill 886

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Oregon Department of Fish and Wildlife

The Department appreciates the opportunity to provide information related to Senate Bill 886 and supports this bill. Senate Bill 886 provides three key changes to the existing law in ORS 496.182 established in 2019 (House Bill 2841). ORS 496.182 allows the Department of Fish and Wildlife to refuse or condition disclosure of information as needed for management or protection of sensitive fish or wildlife species.

ORS 496.182 (2)(5) states 'The department shall require a recipient of information disclosed under subsection (4) of this section to sign an agreement to maintain the confidentiality of the information.' This language has significantly constrained the Department's ability to partner with federal, state, tribal and other public entities to obtain funding and develop shared analyses of fish and wildlife population health that inform species management. For example, the Department regularly contracts with or receives grants from federal agencies to use Department staff and expertise to collect critical species data and/or conduct assessment and analysis of data. The Department historically shared these data freely with our co-managers (e.g., US Fish and Wildlife Service and National Marine Fisheries Service) to ensure the best available information is being used for status assessments and decision making. The Department also shared data regularly with universities to address State research needs, leveraging faculty expertise and aiding in development of future professionals.

Under the ORS 496.182 nondisclosure language, the Department is required to enter into a nondisclosure of sensitive data agreement with these partners. This has posed a significant challenge. In addition to hindering access to data the federal government has funded, federal agencies are subject to federal Freedom of Information Act requirements and have been reluctant to engage in the State's nondisclosure requirements. Senate Bill 886 removes federal governments, tribal governments, public utilities, accredited colleges, and universities, as well as other public bodies defined under ORS 174.109 from the section requiring confidentiality agreements when sensitive data is released. However, the Department still has the latitude to develop agreements with these entities if needed.

Additionally, Senate Bill 886 deletes a duplicative review process for contested cases created in the 2019 law. ORS 496.182 currently creates two pathways for contested cases: a petition to the Attorney General to review a public body's denial of the right to inspect records under ORS 192.411 and an additional Court of Appeals review as an order in a contested case per ORS 183.415. This scheme creates two paths to review the same decision, which could lead to divergent decisions and is very inefficient. Senate Bill 886 retains one pathway – the standard procedure by which a person can petition the Attorney General for public record law review under ORS 192.411.

Last, Senate Bill 886 addresses the upcoming sunset date, January 2, 2024, by extending the sunset date to January 2, 2029. The proposed changes in SB 886 retain the Legislature's interest in providing protections for Oregon's fish and wildlife while allowing the flexibility needed for the Department to work cooperatively with its partners.

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