

A-Engrossed
House Bill 2112

Ordered by the House February 13
Including House Amendments dated February 13

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Secretary of State Shemia Fagan)

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.

Updates definitions and terminology used in public records law pertaining to records retention. Removes references to obsolete technology.

A BILL FOR AN ACT

1
2 Relating to public records; amending ORS 7.010, 8.125, 192.001, 192.005, 192.050, 192.060, 192.105,
3 192.130, 260.255 and 357.825.

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

5 **SECTION 1.** ORS 192.001 is amended to read:

6 192.001. (1) The Legislative Assembly finds that:

7 (a) The records of the state and its political subdivisions are so interrelated and interdependent
8 that the decision as to what records are retained or destroyed is a matter of statewide public policy.

9 (b) The interest and concern of citizens in public records recognizes no jurisdictional boundaries
10 and extends to such records wherever they may be found in Oregon.

11 (c) As local programs become increasingly intergovernmental, the state and its political subdivi-
12 sions have a responsibility to ensure orderly retention and destruction of all public records,
13 whether current or noncurrent, and to ensure the preservation of public records of value for **legal,**
14 administrative, *[legal]* **fiscal, tribal cultural, historical or research** *[and research]* purposes.

15 (2) The purpose of ORS 192.005 to 192.170 and 357.805 to 357.895 is to provide direction for the
16 retention or destruction of public records in Oregon in order to ensure the retention of records es-
17 sential to meet the needs of the Legislative Assembly, the state, its political subdivisions and its
18 citizens, insofar as the records affect the administration of government, legal rights and responsi-
19 bilities, and the accumulation of information of value for research purposes of all kinds, and in order
20 to ensure the prompt destruction of records without continuing value. All records not included in
21 types described in this subsection shall be destroyed in accordance with rules adopted by the Sec-
22 retary of State.

23 **SECTION 2.** ORS 192.005 is amended to read:

24 192.005. As used in ORS 192.005 to 192.170, unless the context requires otherwise:

25 (1) "Archivist" means the State Archivist.

26 (2) "Photocopy" includes a photograph, microphotograph and any other reproduction on paper
27 or film in any scale.

28 (3) "Photocopying" means the process of reproducing, in the form of a photocopy, a public re-

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 cord or writing.

2 (4) "Political subdivision" means a city, county, district or any other municipal or public cor-
3 poration in this state.

4 (5) "Public record":

5 (a) Means any information that:

6 (A) Is prepared, owned, used or retained by a state agency or political subdivision;

7 (B) Relates to an activity, transaction or function of a state agency or political subdivision; and

8 (C) Is necessary to satisfy the [*fiscal*,] legal, administrative, **fiscal, tribal cultural** or historical
9 policies, requirements or needs of the state agency or political subdivision.

10 (b) Does not include:

11 (A) Records of the Legislative Assembly, its committees, officers and employees.

12 (B) Library and museum materials made or acquired and preserved solely for reference or ex-
13 hibition purposes.

14 (C) Records or information concerning the location of archaeological sites or objects as those
15 terms are defined in ORS 358.905.

16 (D) Extra copies of a document, preserved only for convenience of reference.

17 (E) A stock of publications.

18 (F) Messages on voice mail [*or on other telephone message storage and retrieval systems*].

19 (G) Records of the Judicial Department or its officers and employees.

20 (H) Spoken communication that is not recorded.

21 (6) "State agency":

22 (a) Means any state officer, department, board or commission created by the Constitution or
23 statutes of this state.

24 (b) Does not include:

25 (A) The Legislative Assembly or its committees, officers and employees; or

26 (B) The Judicial Department or its officers and employees.

27 **SECTION 3.** ORS 192.050 is amended to read:

28 192.050. A state agency or political subdivision may, with the approval of the proper budgetary
29 authority, cause any public records in its official custody to be photocopied or captured by digital
30 imaging system, as in the case of original filings or recordings, or recorded by [*means of analog or*
31 *digital audio and video tape technology*] **audio or video technology**. Each photocopy, digital image
32 [*and analog or digital audio and video tape*], **audio recording and video recording** shall be made
33 in accordance with the appropriate standard as determined by the State Archivist. Every such re-
34 production shall be deemed an original; and a transcript, exemplification or certified copy of any
35 such reproduction shall be deemed a transcript, exemplification or certified copy, as the case may
36 be, of the original.

37 **SECTION 4.** ORS 192.060 is amended to read:

38 192.060. All photocopies, digital images [*and analog or digital audio and video tapes*], **audio re-**
39 **cordings and video recordings** made under ORS 192.040 and 192.050 shall be properly indexed and
40 [*placed in conveniently accessible files*] **filed so as to facilitate access and retrieval**. Each roll of
41 microfilm shall be deemed a book or volume and shall be designated and numbered and provision
42 shall be made for preserving, examining and using the same.

43 **SECTION 5.** ORS 192.105 is amended to read:

44 192.105. (1) Except as otherwise provided by law, the State Archivist may grant to public offi-
45 cials of the state or any political subdivision specific or continuing authorization for the retention

1 or disposition of public records that are in their custody, after the records have been in existence
 2 for a specified period of time. In granting such authorization, the State Archivist shall consider the
 3 value of the public records for legal, administrative, **fiscal, tribal cultural, historical or research**
 4 *[or research]* purposes and shall establish rules for procedure for the retention or disposition of the
 5 public records.

6 (2)(a) The State Archivist shall provide instructions and forms for obtaining authorization. Upon
 7 receipt of an authorization or upon the effective date of the applicable rule, a state official who has
 8 public records in custody shall destroy or otherwise dispose of those records that are older than the
 9 specified period of retention established by the authorization or rule. An official of a local govern-
 10 ment may destroy such records if such destruction is consistent with the policy of the local govern-
 11 ment. No record of accounts or financial affairs subject to audit shall be destroyed until released
 12 for destruction by the responsible auditor or representative of the auditor. If federal funds are in-
 13 volved, records retention requirements of the United States Government must be observed. Each
 14 state agency and political subdivision shall designate a records officer to coordinate its records
 15 management program and to serve as liaison with the State Archivist. The county records officers
 16 for the purposes of ORS 192.001, 192.050, 192.060, 192.105, 192.130, 357.825, 357.835 and 357.875 shall
 17 be those officers identified in ORS 205.110. The State Archivist shall require periodic reports from
 18 records officers about records management programs. The State Archivist may require state agency
 19 records designated as inactive by the State Archivist to be transferred to the State Records Center,
 20 pending the availability of space.

21 (b) The State Archivist shall determine which parts of a public record are acceptable for ad-
 22 mission to the State Records Center and may require the state agency or governing body to cause
 23 the unacceptable part to be removed before the record is submitted to the State Records Center.

24 (3) Authorizations granted prior to January 1, 1978, by any state agency, the State Archivist,
 25 or any board of county commissioners, to state agencies, schools, school districts, soil and water
 26 conservation districts, or county officials and offices shall remain in effect until they are adopted
 27 or amended by the State Archivist.

28 (4) This section does not apply to legislative records, as defined in ORS 171.410.

29 **SECTION 6.** ORS 192.130 is amended to read:

30 192.130. If the State Archivist determines that any public records of a state agency or political
 31 subdivision in the official custody of the State Archivist prove to have insufficient **legal**, adminis-
 32 trative, *[legal or research]* **fiscal, tribal cultural, historical or research** value to warrant perman-
 33 ent preservation, the State Archivist shall submit a statement or summary thereof to the records
 34 officer of the state agency or political subdivision, or successor agency or body, certifying the type
 35 and nature thereof and giving prior notification of the destruction.

36 **SECTION 7.** ORS 357.825 is amended to read:

37 357.825. (1) The State Archivist may negotiate for, acquire and receive public records, writings
 38 and illustrative materials of value or interest for legal, administrative, **fiscal, tribal cultural, his-**
 39 **torical** or research purposes. The State Archivist is constituted official custodian of all such re-
 40 cords, writings or materials deposited in, acquired for, or transferred upon requisition by the State
 41 Archivist to the custody of the State Archivist for the state archives.

42 (2) The State Archivist shall adopt rules for state agencies and guidelines for local governments
 43 relating to the physical care to be afforded public records and the means of public access to public
 44 records consistent with their physical safety.

45 (3) The State Archivist by rule shall describe or designate state public records that are to be

1 considered inactive.

2 **SECTION 8.** ORS 7.010 is amended to read:

3 7.010. (1) The records of the circuit courts include a register and jury register.

4 (2) The record of the Supreme Court and the Court of Appeals is a register.

5 (3) All references in this chapter to the clerk or court administrator relate to the office of the
6 clerk or court administrator of the appropriate trial or appellate court.

7 (4) Minimum record retention schedules and standards for all records of the state courts and the
8 administrative offices of the state courts may be prescribed by the State Court Administrator pur-
9 suant to ORS 8.125. The State Court Administrator shall ensure that the minimum record retention
10 schedules and standards prescribed under ORS 8.125 conform with policies and standards established
11 by the State Archivist under ORS 192.105, 357.825 and 357.835 (1) for public records valued for legal,
12 administrative, **fiscal, tribal cultural, historical or research** [*or research*] purposes.

13 **SECTION 9.** ORS 8.125 is amended to read:

14 8.125. The State Court Administrator shall, to the extent directed by the Chief Justice of the
15 Supreme Court:

16 (1) Assist the Chief Justice in exercising administrative authority and supervision under ORS
17 1.002.

18 (2) Consistent with applicable provisions of law and rules made thereunder:

19 (a) Supervise the personnel plan for officers, other than judges, and employees of the courts of
20 this state who are state officers or employees.

21 (b) Prescribe the form and content and supervise the preparation of consolidated budgets, for
22 submission to the Legislative Assembly, applicable to expenditures made and revenues received by
23 the state in respect to the courts of this state.

24 (c) Supervise an accounting system for the recording, monitoring and auditing of expenditures
25 made and revenues received by the state in respect to the courts of this state.

26 (d) Establish and maintain inventory records of property of the state in the custody or control
27 of the courts of this state or any judge, other officer or employee thereof.

28 (3) Conduct a continuing survey of the administrative methods and activities, records, business
29 and facilities of the courts of this state and make recommendations to the Chief Justice based on
30 the survey.

31 (4) Collect and compile statistical and other data relating to the courts of this state and mu-
32 nicipal courts, including the caseload, workload, performance, status, management, expenses and
33 revenues of those courts, and make reports on the business and condition of those courts.

34 (5) Establish and supervise a statewide public information service concerning the courts of this
35 state.

36 (6) Establish and supervise education programs for judges, other officers and employees of the
37 courts of this state and municipal courts pertinent to the performance of the functions of those
38 judges, other officers and employees.

39 (7) Provide to the judges, other officers and employees of the courts of this state, to attorneys
40 and to the public appropriate assistance services relating to the administration and management of
41 the courts of this state.

42 (8) Prepare and maintain a continuing long-range plan for improvement and future needs of the
43 courts of this state.

44 (9) Supervise and maintain the law libraries of the judicial department of government of this
45 state, including the State of Oregon Law Library, and excluding county law libraries except as

1 provided in ORS 9.825.

2 (10) Enter into contracts on behalf of the Judicial Department, including but not limited to fi-
3 nancing agreements entered into pursuant to ORS 283.087.

4 (11) Prescribe minimum retention schedules and standards for all records of the state courts and
5 the administrative offices of the state courts, including but not limited to minimum retention
6 schedules and standards for registers, dockets, indexes, files, citations, notes, audio records, video
7 records, stenographic records, exhibits, jury records and fiscal and administrative documents,
8 whether maintained in paper, micrographic, electronic or other storage form. The State Court Ad-
9 ministrator shall ensure that the minimum record retention schedules and standards prescribed un-
10 der this subsection conform with policies and standards established by the State Archivist under
11 ORS 192.105, 357.825 and 357.835 (1) for public records valued for legal, administrative, **fiscal, tribal**
12 **cultural, historical or research** [*or research*] purposes.

13 **SECTION 10.** ORS 260.255 is amended to read:

14 260.255. (1) Except as provided in subsection (2) of this section, a filing officer shall preserve
15 each statement filed with the officer under ORS 260.057, 260.076, 260.083, 260.112 or 260.118, or an
16 accurate copy of it, for at least six calendar years.

17 (2) The Secretary of State shall maintain all data filed electronically under ORS 260.057 on the
18 Internet for at least six calendar years after the date the secretary first makes the data available.
19 After six calendar years, if the data are not maintained on the Internet, the secretary shall retain
20 and dispose of the data in a manner prescribed by the State Archivist. The State Archivist shall
21 consider the value of the data for legal, administrative, **fiscal, tribal cultural, historical or re-**
22 **search** [*or research*] purposes and shall establish rules for procedures for the retention and dispo-
23 sition of data described in this section.

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