

To the subcommittee:

This is a clerical change that concerns the document "[Approved points and unaddressed concepts-PRAC leg subcommittee 10.28.22.pdf](#)" posted on the PRAC website for our last meeting.

These are the non-public-interest concepts on which we agreed earlier. Emily noted one potential oversight in the language we approved. I hope to address it, because the oversight was mine when drafting the plain language version of Todd's proposal on recoverable costs that Tyler and I put forward.

Current statute says a fee can be charged for "summarizing, compiling or tailoring the public records, either in organization or media." Separately, fees can be charged for time spent by an attorney reviewing, redacting and segregating records into exempt and non-exempt. The law says a fee CANNOT be charged for an attorney "determining the application of the provisions of" Oregon records law.

Our new proposal would list three activities for which fees can apply: search, duplication and review. It says review includes redaction. It says a fee can be charged when anyone reviews content for redaction. Lastly, our definition of review repeats, approximately, the current statute's language about certain attorney time that's not eligible for fees.

The proposal on public records work categories, as offered by Tyler and me and approved by the subcommittee, was intended to **fully replace** current language about types of recoverable fees while **fully preserving** the recoverable cost items such as attorney time that are enumerated existing statute.

Unfortunately, in our plain language proposal, we forgot to say we need to delete the existing statute that talks exclusively about attorney time. If our language were signed by the governor as written, it would introduce a redundancy into statute.

I would like to suggest two changes to our proposed language to make it connect to existing statute. First, we should say we want to delete ORS 192.324(4)(b), which says:

~~(b) The public body may include in a fee established under paragraph (a) of this subsection the cost of time spent by an attorney for the public body in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt records. The public body may not include in a fee established under paragraph (a) of this subsection the cost of time spent by an attorney for the public body in determining the application of the provisions of ORS 192.311 (Definitions for ORS 192.311 to 192.478) to 192.478 (Exemption for Judicial Department).~~

Second, we should adjust our definition of review to match current language of that paragraph we wish to delete:

(C) "Review" means reading a record to locate content the public body considers exempt from disclosure and redacting material to which an exemption is applied. Review does not include an attorney's time spent determining ~~whether an exemption may pertain to material or whether the exemption should be applied~~ **the application of the provisions of ORS 192.311 to 192.478.**