

Senate Bill 821

Sponsored by Senator MORSE; Senator GIROD (at the request of John K. Lindsey, Linn County Commissioner)

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**.

Eliminates certain types of meetings that governing bodies of public bodies may conduct in executive session.

A BILL FOR AN ACT

1
2 Relating to executive sessions of public meetings; amending ORS 40.280, 192.660 and 342.176.

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

4 **SECTION 1.** ORS 192.660 is amended to read:

5 192.660. (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from
6 holding executive session during a regular, special or emergency meeting, after the presiding officer
7 has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

8 (2) The governing body of a public body may hold an executive session:

9 (a) To consider the employment of a public officer, employee, staff member or individual agent.

10 (b) To consider the dismissal or disciplining of, or to hear complaints or charges brought
11 against, a public officer, employee, staff member or individual agent who does not request an open
12 hearing.

13 (c) To consider matters pertaining to the function of the medical staff of a public hospital li-
14 censed pursuant to ORS 441.015 to 441.063 including, but not limited to, all clinical committees,
15 executive, credentials, utilization review, peer review committees and all other matters relating to
16 medical competency in the hospital.

17 (d) To conduct deliberations with persons designated by the governing body to carry on labor
18 negotiations.

19 (e) To conduct deliberations with persons designated by the governing body to negotiate real
20 property transactions.

21 (f) To consider information or records that are exempt by law from public inspection.

22 [(g) To consider preliminary negotiations involving matters of trade or commerce in which the
23 governing body is in competition with governing bodies in other states or nations.]

24 [(h)] (g) To consult with counsel concerning [the legal rights and duties of a public body with
25 regard to] current litigation or litigation likely to be filed.

26 [(i)] (h) To review and evaluate the employment-related performance of the chief executive offi-
27 cer of any public body, a public officer, employee or staff member who does not request an open
28 hearing.

29 [(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding
30 proposed acquisition, exchange or liquidation of public investments.]

31 [(k) If the governing body is a health professional regulatory board, to consider information ob-

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 *tained as part of an investigation of licensee or applicant conduct.]*

2 *[(L) If the governing body is the State Landscape Architect Board, or an advisory committee to the*
3 *board, to consider information obtained as part of an investigation of registrant or applicant conduct.]*

4 *[(m)] (i) To discuss information about review or approval of programs relating to the security*
5 *of any of the following:*

6 (A) A nuclear-powered thermal power plant or nuclear installation.

7 (B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal
8 power plant or nuclear installation.

9 (C) Generation, storage or conveyance of:

10 (i) Electricity;

11 (ii) Gas in liquefied or gaseous form;

12 (iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

13 (iv) Petroleum products;

14 (v) Sewage; or

15 (vi) Water.

16 *[(D) Telecommunication systems, including cellular, wireless or radio systems.]*

17 *[(E) Data transmissions by whatever means provided.]*

18 *[(3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides re-*
19 *quest that negotiations be conducted in executive session. Labor negotiations conducted in executive*
20 *session are not subject to the notification requirements of ORS 192.640.]*

21 *[(4)] (3) Representatives of the news media shall be allowed to attend executive sessions other*
22 *than those held under subsection (2)(d) of this section relating to labor negotiations or executive*
23 *session held pursuant to ORS 332.061 (2) but the governing body may require that specified infor-*
24 *mation be undisclosed.*

25 *[(5)] (4) When a governing body convenes an executive session under subsection [(2)(h)] (2)(g)*
26 *of this section relating to conferring with counsel on current litigation or litigation likely to be filed,*
27 *the governing body shall bar any member of the news media from attending the executive session*
28 *if the member of the news media is a party to the litigation or is an employee, agent or contractor*
29 *of a news media organization that is a party to the litigation.*

30 *[(6)] (5) No executive session may be held for the purpose of taking any final action or making*
31 *any final decision.*

32 *[(7)] (6) The exception granted by subsection (2)(a) of this section does not apply to:*

33 (a) The filling of a vacancy in an elective office.

34 (b) The filling of a vacancy on any public committee, commission or other advisory group.

35 (c) The consideration of general employment policies.

36 (d) The employment of the chief executive officer, other public officers, employees and staff
37 members of a public body unless:

38 (A) The public body has advertised the vacancy;

39 (B) The public body has adopted regular hiring procedures;

40 (C) In the case of an officer, the public has had the opportunity to comment on the employment
41 of the officer; and

42 (D) In the case of a chief executive officer, the governing body has adopted hiring standards,
43 criteria and policy directives in meetings open to the public in which the public has had the op-
44 portunity to comment on the standards, criteria and policy directives.

45 *[(8)] (7) A governing body may not use an executive session for purposes of evaluating a chief*

1 executive officer or other officer, employee or staff member to conduct a general evaluation of an
 2 agency goal, objective or operation or any directive to personnel concerning agency goals, objec-
 3 tives, operations or programs.

4 [(9)] (8) Notwithstanding subsections (2) and [(6)] (5) of this section and ORS 192.650:

5 (a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to
 6 the substance and disposition of licensee or applicant conduct investigated by a health professional
 7 regulatory board.

8 (b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to
 9 the substance and disposition of registrant or applicant conduct investigated by the State Landscape
 10 Architect Board or an advisory committee to the board.

11 **SECTION 2.** ORS 40.280 is amended to read:

12 40.280. A person upon whom ORS 40.225 to 40.295 confer a privilege against disclosure of the
 13 confidential matter or communication waives the privilege if the person or the person's predecessor
 14 while holder of the privilege voluntarily discloses or consents to disclosure of any significant part
 15 of the matter or communication. This section does not apply if the disclosure is itself a privileged
 16 communication. Voluntary disclosure does not occur with the mere commencement of litigation or,
 17 in the case of a deposition taken for the purpose of perpetuating testimony, until the offering of the
 18 deposition as evidence. Voluntary disclosure does not occur when representatives of the news media
 19 are allowed to attend executive sessions of the governing body of a public body as provided in ORS
 20 192.660 [(4)] (3), or when representatives of the news media disclose information after the governing
 21 body has prohibited disclosure of the information under ORS 192.660 [(4)] (3). Voluntary disclosure
 22 does occur, as to psychotherapists in the case of a mental or emotional condition and physicians in
 23 the case of a physical condition upon the holder's offering of any person as a witness who testifies
 24 as to the condition.

25 **SECTION 3.** ORS 342.176 is amended to read:

26 342.176. (1) The Teacher Standards and Practices Commission shall promptly undertake an in-
 27 vestigation upon receipt of a complaint or information that may constitute grounds for:

28 (a) Refusal to issue a license or registration, as provided under ORS 342.143;

29 (b) Suspension or revocation of a license or registration, discipline of a person holding a license
 30 or registration, or suspension or revocation of the right to apply for a license or registration, as
 31 provided under ORS 342.175; or

32 (c) Discipline for failure to provide appropriate notice prior to resignation, as provided under
 33 ORS 342.553.

34 (2) The commission may appoint an investigator and shall furnish the investigator with appro-
 35 priate professional and other special assistance reasonably required to conduct the investigation,
 36 and the investigator is empowered to subpoena witnesses over the signature of the executive direc-
 37 tor, swear witnesses and compel obedience in the same manner as provided under ORS 183.440 (2).

38 (3) Following completion of the investigation, the executive director shall report in writing any
 39 findings and recommendations to:

40 (a) The commission, meeting in executive session, at its next regular meeting following com-
 41 pletion of the investigation; and

42 (b) The person against whom the charge is made.

43 (4)(a) Except as provided in paragraph (b) of this subsection, the documents and materials used
 44 in the investigation and the report of the executive director are confidential and not subject to
 45 public inspection unless the commission makes a final determination to:

- 1 (A) Refuse to issue a license or registration, as provided under ORS 342.143;
 - 2 (B) Suspend or revoke a license or registration, discipline a person holding a license or regis-
 - 3 tration, or suspend or revoke the right to apply for a license or registration, as provided under ORS
 - 4 342.175; or
 - 5 (C) Discipline a person for failure to provide appropriate notice prior to resignation, as provided
 - 6 under ORS 342.553.
 - 7 (b) Records made available to the commission under ORS 419B.035 (1)(h) shall be kept confi-
 - 8 dential.
 - 9 (5) If the commission finds from the report that there is sufficient cause to justify holding a
 - 10 hearing under ORS 342.177, it shall notify in writing:
 - 11 (a) The person charged, enclosing a statement of the charges and a notice of opportunity for
 - 12 hearing;
 - 13 (b) The complainant; and
 - 14 (c) The employing district or public charter school, if any.
 - 15 (6) If the commission finds from the report that there is not sufficient cause to justify holding
 - 16 a hearing under ORS 342.177, it shall notify in writing:
 - 17 (a) The person charged;
 - 18 (b) The complainant; and
 - 19 (c) The employing district or public charter school, if any.
 - 20 (7) Notwithstanding ORS 192.660 [(6)] (5), the commission may make its findings under this sec-
 - 21 tion in executive session. However, the provisions of ORS 192.660 [(4)] (3) apply to the sessions.
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