

## SB 106 STAFF MEASURE SUMMARY

### Senate Committee On General Government and Accountability

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**Prepared By:** C Ross, LPRO Analyst

**Sub-Referral To:** Joint Committee On Ways and Means

**Meeting Dates:** 2/6, 3/22

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#### WHAT THE MEASURE DOES:

Establishes Public Records Advocate (Advocate) appointed by the Governor and confirmed by the Senate, to mediate between seekers and holders of public records, within 21 days of written request of either party. Authorizes Advocate to make determinations about either party's good faith participation in mediation and provides remedies for failures of same. Requires Advocate to memorialize agreements in writing for parties to execute, or to issue an advisory opinion when parties fail to agree. Exempts materials exchanged between parties, and materials submitted to or prepared by the Advocate, from disclosure (except the written agreement or the advisory opinion). Requires the Department of Administrative Services to provide office support and directs the preceding duties are operative January 1, 2018. Authorizes the Advocate to review denials of access to records of public bodies that are not state agencies, in the place of the Attorney General, in counties with populations less than 75,000 where the public body is located. Creates a Public Records Advisory Council (Council) to study and make recommendations concerning the Advocate's role, and practices, procedures, exemptions, and fees related to public records. Permits the Council to adopt rules governing the Advocate, and requires a report to the Governor and the Legislature by December 1st of even-numbered years, at a minimum. Establishes Public Records Advisory Account within the General Fund. Takes effect the 91st day after *sine die*.

*FISCAL: May have fiscal impact, but no statement yet issued*

*REVENUE: May have revenue impact, but no statement yet issued*

#### ISSUES DISCUSSED:

- History of task force activity
- General agreement regarding the need for an independent facilitator
- Cost and time-savings of early intervention to address issues
- Merits of various terms: ombudsman, advocate, mediator, facilitator
- Ongoing efforts to iron-out details

#### EFFECT OF AMENDMENT:

[*amendment pending*] Locates Advocate in Archives Division of Secretary of State's office. Requires Council to nominate three candidates for Governor to choose one appointee. Permits Advocate to be removed for cause by Governor or Council. Makes mediation discretionary at local level. Allows person seeking records to opt out of mediation within five days of state agency request. Removes advisory opinions. Removes separate public records exemption. Excludes Judicial Department. Adds two additional members of news media, a representative of local governments or special districts, a member of the public sector work force, one State Representative and one State Senator to the Council. Sunsets end of 2020.

[-9 *amendment*] Directs Secretary of State to appoint Advocate without Senate confirmation, and to provide office and staff support.

[-10 *amendment*] Permits Advocate to prepare reports and studies in addition to those that are required.

*[-11 amendment]* Replaces Public Records Advisory Account with Public Records Advisory Fund for continuous appropriations.

*[-12 amendment]* Adds one representative each from cities, counties, and special districts to Council.

**BACKGROUND:**

In Oregon, as elsewhere, government records are available to the public. Each public body in Oregon maintains its own records and handles requests for access. They are required to have a process, available in writing for those seeking access to request a copy of the records or an opportunity to inspect them. Public bodies are also required to respond in a reasonable amount of time and may recover costs associated with satisfying the request. If a public body denies a request for records, it may be appealed through the Department of Justice or a county district attorney at no cost (depending on the public body), and if that appeal is denied, it may be challenged in court. Denials of requests for public records by elected officials must be challenged in court directly, without an intermediate appeal.

Every legislative session, Oregon lawmakers entertain proposed adjustments to the laws that govern the disclosure of information in the possession of public bodies. Creating exceptions to disclosure requirements involves respecting the inherent tensions between principles of transparency and rights of privacy. When an exception applies, determinations about whether and what to disclose are not always simple or straightforward. Even when there is no determination to be made, a public body can experience difficulty satisfying a request for records in an efficient manner, depending on its resources, the expectations of the requestor, and the nature, breadth, and number of requests. Conflicts can arise between those seeking information, those in possession of information, and those who are the subject of the information.

Senate Bill 106 creates a Public Records Advocate and a Public Records Advisory Council to mediate between seekers and holders of public records when conflicts arise.