

SB 481 STAFF MEASURE SUMMARY

Senate Committee On General Government and Accountability

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Meeting Dates: 2/22, 3/22, 4/5

WHAT THE MEASURE DOES:

Makes findings and expresses policy concerning inspection of public records. Modifies requirement for public bodies to *respond* to requests for public records "as soon as practicable without unreasonable delay," to require public bodies to *acknowledge* requests within five business days, and to *complete* requests as soon as practicable and without unreasonable delay, or as soon as reasonably possible but not later than 10 business days after the acknowledgement. Defines acknowledgment as completing the request or: confirming possession of the records sought, or lack of possession, or uncertainty about possession. Defines completed requests as providing access to or copies of all nonexempt records, and/or thorough explanations for any records denied, or not in possession, or not capable of acknowledgment, including instructions how to obtain review. Permits public body to exceed time limits for specified reasons, with written explanation to the requestor including an estimated completion date. Makes it explicit that public bodies may communicate with requesters and suspends completion of requests pending reply and receipt of any fee not waived. Includes estimated completion dates and failures to comply among actions that are subject to review. Deems failures to respond, denials for purposes of review. Requires Attorney General to maintain accessible, comprehensive list of statutory exemptions. Requires Legislative Counsel and district attorneys to contribute information. Provides public bodies with immunity from liability for damage caused by disclosures made in good faith. Deems good faith disclosures of privileged information do not constitute a waiver and are not voluntary.

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

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

ISSUES DISCUSSED:

- Task force activity that led to proposed legislation
- Main points: time limits, immunity from liability for disclosure and searchable list of exemptions
- General support from members of media

EFFECT OF AMENDMENT:

[-14 amendment] Eliminates policy statement. Provides for automatic withdrawal of requests inactive for 60 days. Rewords appeal process. Defines "business day." Clarifies that the comprehensive list of exemptions and public bodies may not be exhaustive. Strengthens language providing immunity for good faith compliance. Excludes records of registered bond ownership.

BACKGROUND:

In Oregon, as elsewhere, government records are available to the public unless they are exempt from disclosure. 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 asserts that an exemption applies, denying a request for records, the

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assertion may be appealed through the Oregon 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.

There are two categories of public records that are exempt from disclosure. One category may be released upon a showing that the public interest requires disclosure (ORS 192.501), such as information about active litigation, trade secrets, investigative reports in criminal proceedings, and electors' residential addresses. The other category of records that are exempt, are those that require a particularized showing in order to warrant being made public (ORS 192.502), such as: advisory communications where the public interest outweighs the interest in frank discussions; medical or other similar personal information where the public interest is clear and convincing and does not constitute an unreasonable invasion of privacy and the private addresses, phone numbers and dates of birth of public employees and volunteers, where the public interest is shown by clear and convincing evidence.

The majority of public records requests are satisfied without controversy, a small number involve complexities that are not always capable of simple or rapid resolution. Conflicts can arise between those seeking information, those in possession of information and those who are the subject of the information. Every legislative session, Oregon lawmakers consider proposed adjustments to the laws that govern public access to information, with respect for the inherent tensions between principles of transparency and rights of privacy. The 2017 session brings a trio of proposed legislation: House Bill 2101 concerned with establishing a process of regular legislative review of exemptions; Senate Bill 106 proposed by the Governor's office, creating the Office of Public Records Advocate and the Public Records Advisory Council to address conflicts and Senate Bill 481, proposed by the Attorney General, based on recommendations from the Attorney General's Public Records Law Reform Task Force (the Task Force). The Task Force met for more than a year working on ways to improve the customer service orientation and responsiveness of public bodies.

Senate Bill 481 modifies the existing requirement that public bodies respond to requests for public records within a reasonable time frame, by adding deadlines: it requires public bodies to acknowledge requests within five business days, and complete them as soon as practicable, but no later than 10 business days after the acknowledgement. The five and ten-day deadlines may be exceeded for specified reasons, but the public body must inform the requestor and provide a reasonable, estimated completion date. The measure encourages communications between the public body and the requestor to clarify requests and to keep the requester informed, and it requires detailed explanations if a request is denied or the public body is unable to satisfy it for other reasons. It also permits requestors to seek review for noncompliance and to challenge the reasonableness of estimated completion dates, in addition to denials. Further, the measure provides for the establishment of a publicly-available, comprehensive list of statutory exemptions, in a searchable format and protects public bodies from liability for any damage caused by disclosures made in good faith.