

SB 106 STAFF MEASURE SUMMARY

Senate Committee On General Government and Accountability

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 2/6, 3/22, 4/5, 4/10

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:

[-16 amendments] 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 with Governor's consent. Provides for appeal of removal. Changes mediation to facilitated dispute resolution. Makes dispute resolution discretionary as between requestors and cities. Allows person seeking records to opt out of dispute resolution requested by state agency, in writing within five days of request for same, and prohibits state agency from finding lack of good faith participation in dispute resolution process based on exercise of opt-out. Provides for appeal of Advocate determination of lack of good faith participation in dispute resolution. Removes advisory opinions. Permits Advocate to prepare reports and studies in addition to those that are required. Removes separate public records exemption and clarifies applicability of existing exemptions. Excludes Judicial Department. Adds two additional members of news media, a member of the public sector work force, one State Representative, one State Senator, and one representative each from cities, counties and special districts to the

Council. Provides for Council to address initial question of nominees within ten days of Senate confirmation, and to convene and be chaired by Secretary of State during Advocate vacancies. Replaces Public Records Advisory Account with Public Records Advisory Fund for continuous appropriations. Sunsets Council December 31, 2020. Declares emergency, effective on passage.

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 assertion 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.)

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.

Although the majority of ordinary requests for records are satisfied without controversy, a small but critical 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 entertain 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 481, proposed by the Attorney General after more than a year of task force activity, to improve the customer service orientation and responsiveness of public bodies; and Senate Bill 106 proposed by the Governor's office, creating the office of Public Records Advocate and the Public Records Advisory Council to facilitate resolutions between seekers and holders of public records when conflicts arise.