

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

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. Directs moneys to be appropriated from 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:

EFFECT OF AMENDMENT:

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; determinations about whether and what to disclose when an exception applies are not simple; and 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 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.

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Senate Bill 106 creates a Public Records Advocate to mediate disputes around the disclosure of public records, make determinations about the good faith participation of the parties, issue written agreements and opinions, review certain denials of requests for records, and train public bodies. Senate Bill 106 also recreates a Public Records Advisory Council to study and inform the practices, procedures, exemptions, and fees related to public records, and report to the Governor and the Legislature on a biennial basis.