

SB 481 A STAFF MEASURE SUMMARY**Carrier:** Sen. Beyer**Senate Committee On General Government and Accountability**

Action Date: 04/05/17
Action: Do pass with amendments. (Printed A-Eng.)
Vote: 5-0-0-0
Yeas: 5 - DeBoer, Hass, Prozanski, Riley, Thatcher
Fiscal: Fiscal impact issued
Revenue: No revenue impact
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WHAT THE MEASURE DOES:

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 no later than 10 business days after acknowledgment. Defines acknowledgment as completing request or confirming: possession of records sought; 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, 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 requester including estimated completion date. Makes explicit that public bodies may communicate with requesters. Suspends completion of requests pending reply and receipt of any fee not waived and provides for automatic closure upon 60 days' inactivity. Includes estimated completion dates and failures to comply among actions that are subject to review. Treats a public body's failure to respond as a denial for purposes of review. Requires Oregon Department of Justice 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 waiver and are not voluntary.

ISSUES DISCUSSED:

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

EFFECT OF AMENDMENT:

Eliminates policy statement and makes further refinements. Provides for automatic withdrawal of requests inactive for 60 days. Clarifies language of appeal process. Defines "business day." Recognizes that 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 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.

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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, but a certain 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 of the Attorney General's Public Records Law Reform Task Force, which met for more than a year to develop ways to improve the customer service orientation and responsiveness of public bodies.

Senate Bill 481-A 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 requester and provide a reasonable, estimated completion date. The measure encourages communications between the public body and the requester 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. In addition, SB 481-A permits requesters to seek review for noncompliance and to challenge the reasonableness of estimated completion dates, in addition to denials. Further, it 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.