

## HB 2101 A STAFF MEASURE SUMMARY

### House Committee On Rules

---

**Action Date:** 06/19/17

**Action:** Do pass with amendments and be referred to Ways and Means. (Printed A-Eng.)

**Vote:** 9-0-0-0

**Yeas:** 9 - Barreto, Hack, Holvey, Kennemer, McLane, Nosse, Rayfield, Smith Warner, Williamson

**Fiscal:** Fiscal impact issued

**Revenue:** No revenue impact

**Prepared By:** Erin Seiler, LPRO Analyst

---

#### WHAT THE MEASURE DOES:

Establishes four-member public record subcommittee of Legislative Counsel Committee (LCC). Specifies membership. Establishes 15-member Oregon Sunshine Committee (OSC) supported by Oregon Department of Justice. Specifies membership, quorum and meeting requirements and terms of service. Meetings of subcommittee and OSC are public meetings and records of OSC are subject to disclosure, privilege or exemption that otherwise would be applicable may not be asserted. Pursuant to schedule approved by subcommittee, OSC will review public records exemptions included in Attorney General's (AGs) exemption catalog by December 31, 2026. Specifies types of exemptions not subject to review. Requires OSC report to subcommittee, by July 1 of each even-numbered year, recommendations to amend or repeal exemptions subject to review. OSC will review Oregon Administrative Rule (OAR) that impacts public records disclosure, if affected person or legislator requests review, and identify inefficiencies and inconsistencies in application of public records laws. Subcommittee will review OSCs schedule for reviewing public records exemptions included in AGs catalog and OSC's biennial report on exemptions. LCC may accept, modify or reject schedule and report from OSC. No later than September 1 of every even-numbered year, subcommittee must submit to LCC its report on exemptions with original OSC report included as appendix. Requires Legislative Counsel (LC) prepare open government impact statement for measures reported out of legislative committee that impacts disclosure, or exemption from disclosure of public record. Specifies content of statement. Requires LC notify LCC, or its designee and OSC about measures that change exemptions or existing public records disclosure standards. Effective 91st day following adjournment sine die.

#### ISSUES DISCUSSED:

- Need to improve transparency of public records exemptions
- Establishment of legislative committee to review current exemptions and requests for new exemptions
- Types of exemptions that should not be subject to review or sunset (Federal law, HIPAA and privilege)
- Identifying and cataloging all public records exemptions
- Challenges public entities encounter when filling public records requests
- Model sunset process on process for reviewing tax credits
- Establishment of Sunshine Committee within Archival Division
- "Three-legged stool" of public records legislation
- Work of Attorney General's Public Records Law Reform Task Force
- Requiring open government impact statement for any legislation affecting disclosure or exemption

#### EFFECT OF AMENDMENT:

Replaces measure.

#### 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

## **HB 2101 A STAFF MEASURE SUMMARY**

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.

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: Senate Bill 106-A proposed by the Governor's office, creating the Office of Public Records Advocate and the Public Records Advisory Council to address conflicts; Senate Bill 481-A, 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; and House Bill 2101-A, concerned with establishing a process of regular legislative review of longstanding and proposed exemptions to requests for public records.

House Bill 2101-A establishes a four-member public records subcommittee of the Legislative Counsel Committee (LCC) and a 15-member Oregon Sunshine Committee (OSC) to work in coordination on a review of public records exemptions by December 31, 2026. The measure requires OSC to submit a biennial report to the public records subcommittee recommending retention, amendment or repeal of recently reviewed public records exemptions. The subcommittee may then accept, modify or reject recommendations contained in the OSC report, prior to submitting it to LCC. In addition, the measure creates an open government impact statement prepared by Legislative Counsel's office, for each measure reported out of a legislative committee that impacts the disclosure of public records. The statement must describe how the measure changes existing standards regarding disclosure and its impact on the public interest.