

Jeffrey Nitschke
Testimony Regarding HB 2353

Good afternoon Chair Williamson, Vice Chairs Gorsek and Sprenger, and Members of the Committee,

My name is Jeffrey Nitschke. I am testifying on behalf of ODAA regarding concerns over HB 2353. Generally, Oregon public records law permits district attorneys' offices to be the first layer of review for public records request denials or fee waiver denials. They review the initial denial and records to decide if they are subject to disclosure and then issue an opinion to the agency directing an outcome. A petitioner or agency may then appeal that decision to a circuit court. Though the law allows attorney generals and courts to do this initial review, district attorneys receive the vast majority of these appeals.

The present bill adds the ability for district attorneys to assess fees, and reasonable attorney fees, to an agency if they do not comply with statutory timelines. We do not inherently disagree with the use of fees to incentivize compliance with public records laws. However, using district attorneys to assess these fees will abrogate the benefits our review provides.

First, the district attorneys review provides expeditious and efficient resolution of the vast majority of disputes. A shift in focus from the content of the records to assessing fees dramatically alters the efficiency of this process. District Attorneys offer a neutral set of eyes on a denial, with the aim of resolving disputes quickly and to promoting the efficient disclosure. Built into this efficiency is the informal nature of the review, done without official court procedures, hearings, responses, etc... Assessing fees necessitates a formal review, including hearings, filings, or responses, allowing arguments and filings as to why a fee should/should not be assessed, and the amount. DA offices are not courts and are ill-equipped to engage in this process.

Secondly, an important benefit of the current law is the district attorneys' ability to communicate with other agencies with candor. Many agencies promptly return district attorney inquiries with honest answers about what a given public records situation may be. This candor and promptness promotes quick resolution of public records disputes. Giving our offices the additional role of assessing punitive fees will substantially chill agency candor and slow down the review and resolution of disputes.

Importantly, the State of Washington has enacted a similar provision, RCW 42.56.550, permitting a penalty between \$5 and \$100 for each day a record is wrongly withheld. However, the RCW specifically assigns this review to courts.

In summary, the only opposition ODAA has to this bill is its modification of the role of the district attorney. Should courts be assigned this function instead, our role will be preserved as a quick and efficient intervener, promoting proper disclosure of records the public is entitled to.