

**A-Engrossed**  
**House Bill 2101**

Ordered by the House June 22  
Including House Amendments dated June 22

Sponsored by Representative HUFFMAN (Pre-session filed.)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

*[Sunsets certain exemptions from disclosure for public records. Requires Legislative Assembly to review exemptions prior to sunset. Requires future exemptions to sunset within six years of date of enactment.]*

**Directs Legislative Counsel to prepare open government impact statement for measures that affect disclosure, or exemption from disclosure, of public records. Establishes Oregon Sunshine Committee to establish schedule of review for exemptions from disclosure for public records. Directs Oregon Sunshine Committee to submit report to Legislative Counsel Committee subcommittee on public records and include in report recommended changes to public records process and recommendations to amend or repeal exemptions from disclosure. Directs Legislative Counsel Committee to establish public records subcommittee to review report from Oregon Sunshine Committee and submit report to Legislative Counsel Committee.**

**Takes effect on 91st day following adjournment sine die.**

**A BILL FOR AN ACT**

Relating to public records; and prescribing an effective date.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. As used in sections 1 to 7 of this 2017 Act, "public record" has the meaning given that term in ORS 192.410.**

**SECTION 2. (1) The Legislative Counsel shall prepare an open government impact statement for each measure reported out of a committee of the Legislative Assembly if the measure affects the disclosure, or exemption from disclosure, of a public record.**

**(2) An open government impact statement must:**

**(a) State whether the measure conforms to any standards adopted by the Legislative Counsel for drafting measures that establish exemptions from disclosure of public records; and**

**(b) Describe how the measure would alter existing standards regarding the disclosure or exemption from disclosure of public records and how the measure would impact public interests in disclosure that would be served if the public record were subject to mandatory disclosure.**

**SECTION 3. The Legislative Counsel shall notify the Legislative Counsel Committee, or its designee, and the Oregon Sunshine Committee if a measure that changes an exemption from disclosure for public records or existing standards of disclosure for public records is introduced.**

**SECTION 4. (1) The Legislative Counsel Committee shall establish a public records subcommittee.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1       (2) The President of the Senate and the Speaker of the House of Representatives shall  
2 appoint to the subcommittee four members of the Legislative Assembly from among the  
3 members of the committee as follows:

4       (a) The President of the Senate shall appoint:

5       (A) One member who is a member of the Senate and a member of the majority party;  
6 and

7       (B) One member who is a member of the Senate and a member of the minority party.

8       (b) The Speaker of the House of Representatives shall appoint:

9       (A) One member who is a member of the House of Representatives and a member of the  
10 majority party; and

11       (B) One member who is a member of the House of Representatives and a member of the  
12 minority party.

13       (c) The President of the Senate and the Speaker of the House of Representatives shall  
14 each appoint a cochair from the members described in paragraphs (a) and (b) of this sub-  
15 section.

16       (3) The subcommittee shall review and may accept, modify or reject the plan or schedule  
17 for review of exemptions from disclosure for public records established by the Oregon Sun-  
18 shine Committee under section 6 of this 2017 Act.

19       (4) The subcommittee shall review the Oregon Sunshine Committee reports required by  
20 section 6 of this 2017 Act and may accept, modify or reject the Oregon Sunshine Committee  
21 reports as the reports of the subcommittee. On or before September 1 of each even-  
22 numbered year, the subcommittee shall submit the subcommittee report, with the original  
23 Oregon Sunshine Committee report as an appendix, to the Legislative Counsel Committee.

24       (5) The subcommittee shall cooperate with and invite advice and comment from:

25       (a) The Attorney General;

26       (b) The Governor;

27       (c) The Secretary of State;

28       (d) Any committee or task force appointed by the Attorney General, the Governor or the  
29 Secretary of State to examine any aspect of ORS 192.410 to 192.505 or of the disclosure of  
30 public records; and

31       (e) The Oregon Sunshine Committee.

32       (6) Interested members of the public may provide comment to the subcommittee.

33       **SECTION 5.** (1) The Legislative Counsel Committee and the public records subcommittee  
34 established under section 4 of this 2017 Act may adopt rules applicable to deliberations of the  
35 committee and subcommittee under sections 1 to 7 of this 2017 Act. The rules may enhance  
36 the opportunity for public participation in the deliberations of the committee and subcom-  
37 mittee, including through the live-streaming of meetings.

38       (2) All deliberations of the Legislative Counsel Committee and the public records sub-  
39 committee shall be conducted in accordance with the open meeting requirements of Article  
40 IV, section 14, of the Oregon Constitution, and rules adopted thereunder.

41       **SECTION 6.** (1) The Oregon Sunshine Committee is established, consisting of 15 members  
42 as follows:

43       (a) The members of the public records subcommittee established under section 4 of this  
44 2017 Act shall be ex officio nonvoting members of the committee.

45       (b) The Governor and the Attorney General, or their designees, shall be voting members

1 of the committee.

2 (c) The State Archivist, or a designee of the State Archivist, shall be a voting member  
3 of the committee.

4 (d) The Attorney General shall appoint to the committee as voting members:

5 (A) A person with information technology expertise;

6 (B) Three representatives of local government to represent the interests of counties,  
7 cities, school districts and special districts;

8 (C) A representative of broadcasters;

9 (D) A representative of professional journalists;

10 (E) A representative of newspaper publishers; and

11 (F) A representative from a nonprofit open government or public interest group.

12 (2)(a) The term of each voting committee member appointed by the Attorney General is  
13 four years, but a member so appointed serves at the pleasure of the Attorney General.

14 (b) Before the expiration of a term of a member appointed by the Attorney General, the  
15 Attorney General shall reappoint the member to a new term or appoint a successor.

16 (c) If there is a vacancy for any cause in a position that is appointed by the Attorney  
17 General, the Attorney General shall make an appointment to become immediately effective.

18 (3) The Oregon Sunshine Committee shall do all of the following:

19 (a) Establish, and adjust as necessary, a plan or schedule to review all exemptions from  
20 disclosure for public records included in the Attorney General's catalog required by section  
21 7, chapter \_\_\_\_\_, Oregon Laws 2017 (Enrolled Senate Bill 481), that provides for review not  
22 later than December 31, 2026, except that the following exemptions need not be considered:

23 (A) Exemptions required by federal law;

24 (B) Evidentiary privileges described in ORS 40.225 to 40.295, other than the lawyer-client  
25 privilege described in ORS 40.225;

26 (C) The exemption for trade secrets as described in the public records law, ORS 192.410  
27 to 192.505, or the Uniform Trade Secrets Act, ORS 646.461 to 646.475;

28 (D) Security records described in ORS 192.501 (23) or 192.502 (11), (32) or (33);

29 (E) Personal information of certain scientific workers described in ORS 192.501 (30), care  
30 workers described in ORS 192.435 and 192.437 or public safety workers described in ORS  
31 192.501 (31); and

32 (F) Public safety plans described in ORS 192.501 (18).

33 (b) Include in the review required by this subsection any administrative rule for which  
34 a review was requested under section 9 of this 2017 Act.

35 (c) Study and identify any inefficiencies and inconsistencies in the application of public  
36 records laws that impede transparency in public process and government.

37 (d) Make recommendations on changes in existing law, policy and practice to enhance  
38 transparency and facilitate rapid fulfillment of public records requests made to public bodies.

39 (e) On or before July 1 of each even-numbered year, submit a report to the public records  
40 subcommittee established under section 4 of this 2017 Act and include in the report the rec-  
41 ommendations described in paragraph (d) of this subsection and recommendations to amend  
42 or repeal the exemptions from disclosure reviewed by the committee during the period since  
43 the last report submitted by the committee under this section.

44 (4) The Oregon Sunshine Committee may take all lawful actions and exercise any lawful  
45 powers the committee deems reasonable for facilitating its work, including but not limited

1 to conducting public hearings and creating subcommittees. Any subcommittees created by  
2 the committee are subject to the public meetings and public records requirements that apply  
3 to the committee.

4 (5) A majority of the voting members of the Oregon Sunshine Committee constitutes a  
5 quorum for the transaction of business.

6 (6) Official action by the committee requires the approval of a majority of the voting  
7 members of the committee.

8 (7) The committee shall select one of its members to serve as chairperson.

9 (8) The committee shall meet at times and places specified by the call of the chairperson  
10 or of a majority of the voting members of the committee and shall meet at least three times  
11 per year.

12 (9) All meetings of the committee must be open to the public. Any public records created  
13 by the committee are subject to disclosure, and any privilege or exemption from disclosure  
14 that would otherwise be applicable may not be claimed.

15 (10) The committee may adopt rules necessary for the operation of the committee.

16 (11) The Department of Justice shall provide administrative support to the committee.

17 (12) Members of the committee who are not members of the Legislative Assembly are  
18 not entitled to compensation, but may be reimbursed for actual and necessary travel and  
19 other expenses incurred by them in the performance of their official duties in the manner  
20 and amounts provided for in ORS 292.495. Claims for expenses incurred in performing func-  
21 tions of the committee shall be paid out of funds appropriated to the Department of Justice  
22 for purposes of the committee.

23 (13) All agencies of state government, as defined in ORS 174.111, are directed to assist  
24 the committee in the performance of the committee's duties and, to the extent permitted  
25 by laws relating to confidentiality, to furnish information and advice the members of the  
26 committee consider necessary to perform their duties.

27 **SECTION 7.** (1) Pursuant to a plan or schedule for review accepted by the public records  
28 subcommittee of the Legislative Counsel Committee under section 4 of this 2017 Act, the  
29 Oregon Sunshine Committee may review exemptions from disclosure of public records pre-  
30 viously enacted into law for which an open government impact statement was not prepared.

31 (2) On or before July 1 of each even-numbered year, the Oregon Sunshine Committee  
32 shall deliver to the public records subcommittee the results of any review performed pursu-  
33 ant to this section.

34 **SECTION 8.** Section 9 of this 2017 Act is added to and made a part of ORS 183.710 to  
35 183.725.

36 **SECTION 9.** (1) As used in this section, "public record" has the meaning given that term  
37 in ORS 192.410.

38 (2) The Oregon Sunshine Committee shall include in the plan or schedule for review es-  
39 tablished under section 6 of this 2017 Act an adopted rule of a state agency upon the written  
40 request of any person affected by the rule if the adopted rule impacts the disclosure, or ex-  
41 emption from disclosure, of a public record. The request must specify the disclosure or ex-  
42 emption that is of concern.

43 (3) The committee shall include in the plan or schedule for review established under  
44 section 6 of this 2017 Act an adopted rule of a state agency upon the written request of a  
45 member of the Legislative Assembly if the adopted rule impacts the disclosure, or exemption

1 from disclosure, of a public record.

2 **SECTION 10.** (1) Notwithstanding the term of office specified by section 6 of this 2017  
3 Act, of the voting members first appointed to the Oregon Sunshine Committee:

4 (a) Two shall serve for terms ending December 31, 2018.

5 (b) Two shall serve for terms ending December 31, 2019.

6 (c) Three shall serve for terms ending December 31, 2020.

7 (2) The Attorney General shall determine with specificity which appointed members will  
8 serve which terms under subsection (1) of this section.

9 **SECTION 11.** (1) Sections 1 to 7 and 9 of this 2017 Act become operative on January 1,  
10 2018.

11 (2) The Attorney General, the Governor, the Legislative Counsel, the Legislative Counsel  
12 Committee, the President of the Senate, the Speaker of the House of Representatives and the  
13 State Archivist may take any action before the operative date specified in subsection (1) of  
14 this section that is necessary to enable the Attorney General, the Governor, the Legislative  
15 Counsel, the Legislative Counsel Committee, the President of the Senate, the Speaker of the  
16 House of Representatives and the State Archivist to exercise, on and after the operative date  
17 specified in subsection (1) of this section, all of the duties, functions and powers conferred  
18 on the Attorney General, the Governor, the Legislative Counsel, the Legislative Counsel  
19 Committee, the President of the Senate, the Speaker of the House of Representatives and the  
20 State Archivist by sections 1 to 7 and 9 of this 2017 Act.

21 **SECTION 12.** This 2017 Act takes effect on the 91st day after the date on which the 2017  
22 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

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