

Enrolled House Bill 2101

Sponsored by Representative HUFFMAN; Representatives ALONSO LEON, BYNUM, EVANS, FAHEY, MEEK, NEARMAN, POWER, WILLIAMSON (Presession filed.)

CHAPTER

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.

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

(a) The President of the Senate shall appoint:

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

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

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

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

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

(c) The President of the Senate and the Speaker of the House of Representatives shall each appoint a cochair from the members described in paragraphs (a) and (b) of this subsection.

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

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

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

(a) The Attorney General;

(b) The Governor;

(c) The Secretary of State;

(d) The State Treasurer;

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

(f) The Oregon Sunshine Committee.

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

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

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

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

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

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

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

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

(A) A person with information technology expertise;

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

(C) A representative of broadcasters;

(D) A representative of professional journalists;

(E) A representative of newspaper publishers; and

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

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

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

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

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

(a) Establish, and adjust as necessary, a plan or schedule to review all exemptions from disclosure for public records included in the Attorney General's catalog required by section 7, chapter 456, Oregon Laws 2017 (Enrolled Senate Bill 481), that provides for review not later than December 31, 2026, except that the following exemptions need not be considered:

(A) Exemptions required by federal law;

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

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

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

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

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

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

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

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

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

(4) The Oregon Sunshine Committee may take all lawful actions and exercise any lawful powers the committee deems reasonable for facilitating its work, including but not limited to conducting public hearings and creating subcommittees. Any subcommittees created by the committee are subject to the public meetings and public records requirements that apply to the committee.

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

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

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

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

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

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

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

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

(13) All agencies of state government, as defined in ORS 174.111, are directed to assist the committee in the performance of the committee's duties and, to the extent permitted

by laws relating to confidentiality, to furnish information and advise the members of the committee consider necessary to perform their duties.

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

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

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

SECTION 9. (1) As used in this section, “public record” has the meaning given that term in ORS 192.410.

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

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

SECTION 10. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Justice, for the biennium beginning July 1, 2017, out of the General Fund, the amount of \$212,831 for the purpose of carrying out the responsibilities of the Attorney General and the department under sections 1 to 7 and 9 of this 2017 Act.

SECTION 11. (1) Notwithstanding the term of office specified by section 6 of this 2017 Act, of the voting members first appointed to the Oregon Sunshine Committee:

- (a) Two shall serve for terms ending December 31, 2018.
- (b) Two shall serve for terms ending December 31, 2019.
- (c) Three shall serve for terms ending December 31, 2020.

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

SECTION 12. (1) Sections 1 to 7 and 9 of this 2017 Act become operative on January 1, 2018.

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

SECTION 13. This 2017 Act takes effect on the 91st day after the date on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

Passed by House July 5, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate July 6, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

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Dennis Richardson, Secretary of State