

A-Engrossed
Senate Bill 500

Ordered by the Senate March 5
Including Senate Amendments dated March 5

Sponsored by Senator THATCHER, Representative POWER (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.

Establishes Public Records Advocate as independent office **within executive department**. Requires Public Records Advocate to select and appoint Deputy Public Records Advocate and authorizes advocate to delegate authority, power or duty to act to deputy.

Authorizes Public Records Advisory Council to appoint advocate. Authorizes council to support or oppose legislation relating to public records law and to request legislators to introduce legislation relating to public records law.

Establishes Public Records Advocate Fund in State Treasury. Continuously appropriates moneys in fund for purpose of funding operations of office of Public Records Advocate and Public Records Advisory Council.

Ratifies and affirms actions taken by council before effective date of Act to recruit and appoint advocate.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the Public Records Advisory Council; creating new provisions; amending ORS 192.461,
3 192.481 and 192.483 and section 3, chapter 107, Oregon Laws 2019; and declaring an emergency.

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

5 **SECTION 1.** ORS 192.461 is amended to read:

6 192.461. (1) The office of the Public Records Advocate is created **as an independent office**
7 **within the executive department, separate and distinct from any other state agency.**

8 (2) The Public Records Advocate shall be appointed by the [*Governor from among a panel of*
9 *three qualified individuals nominated by the*] Public Records Advisory Council under ORS 192.481
10 [*and shall be confirmed by the Senate in the manner prescribed in ORS 171.562 and 171.565*].

11 (3) The Public Records Advocate shall be a member in good standing of the Oregon State Bar.

12 (4) The term of office of the Public Records Advocate shall be four years, except that the ad-
13 vocate may be removed for cause by the [*Governor or upon motion of the*] Public Records Advisory
14 Council [*with the consent of the Governor*]. A determination to remove for cause may be appealed
15 as a contested case proceeding under ORS chapter 183.

16 (5) The advocate may be reappointed to consecutive terms.

17 (6) The Public Records Advocate is in the [*unclassified*] **exempt** service.

18 (7)(a) **The Public Records Advocate shall select, appoint and fix the compensation of a**
19 **Deputy Public Records Advocate. The Deputy Public Records Advocate shall be a member in**
20 **good standing of the Oregon State Bar.**

21 (b) **The Public Records Advocate may delegate to the Deputy Public Records Advocate**
22 **any authority, power or duty to act possessed by the Public Records Advocate except the**

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 **power to delegate set forth in this paragraph.**

2 **(c) If the position of the Public Records Advocate becomes vacant, the Deputy Public**
3 **Records Advocate shall serve as the acting Public Records Advocate until a new Public Re-**
4 **ords Advocate has been appointed.**

5 **(8)(a)** The Public Records Advocate may hire **and fix the compensation of** *[one or more deputy*
6 *advocates or]* other professional staff to assist in performing the duties assigned to the Public Re-
7 cords Advocate.

8 **(b) Officers and employees of the office of the Public Records Advocate are in the exempt**
9 **service.**

10 **(9) The Public Records Advocate may seek out office facilities and administrative support**
11 **from other state agencies or local public bodies. State agencies shall assist the advocate.**
12 **Local public bodies may assist the advocate.**

13 *[(8)(a) The State Archivist may furnish office facilities and provide administrative support to the*
14 *Public Records Advocate.]*

15 *[(b) If the State Archivist declines to furnish office facilities and provide administrative support to*
16 *the Public Records Advocate, the Oregon Department of Administrative Services shall furnish office*
17 *facilities and provide administrative support to the advocate.]*

18 **SECTION 2.** ORS 192.481 is amended to read:

19 192.481. (1) The Public Records Advisory Council is created.

20 (2) The Public Records Advisory Council consists of:

21 (a) The Secretary of State or a designee of the Secretary of State;

22 (b) The Attorney General or a designee of the Attorney General;

23 (c) The Director of the Oregon Department of Administrative Services or a designee of the di-
24 rector;

25 (d) A representative of the news media who is a member in good standing of a professional
26 journalism association and who is appointed by the Governor;

27 (e) Two additional representatives of the news media who are appointed by the Governor;

28 (f) A representative of the cities of this state who is appointed by the Governor;

29 (g) A representative of the counties of this state who is appointed by the Governor;

30 (h) A representative of the special districts of this state who is appointed by the Governor;

31 (i) A representative of the public sector workforce who is appointed by the Governor;

32 (j) A member of the public who is appointed by the Governor;

33 (k) A Senator who is appointed by the President of the Senate and who serves as an ex officio
34 nonvoting member;

35 (L) A Representative who is appointed by the Speaker of the House of Representatives and who
36 serves as an ex officio nonvoting member; and

37 (m) *[Except as provided in subsection (3) of this section,]* The Public Records Advocate*[, who shall*
38 *serve as chair of the council].*

39 **(3) The council shall elect a chairperson and a vice chairperson, who each shall serve in**
40 **that capacity for a two-year term, or until their membership on the council ends, whichever**
41 **is of shorter duration. A chairperson or vice chairperson may be reelected to their positions.**

42 *[(3)]* **(4)** At any time when the office of Public Records Advocate is vacant:

43 *[(a) The Secretary of State or a designee of the Secretary of State shall serve as the acting chair*
44 *of the Public Records Advisory Council;]*

45 *[(b)]* **(a)** The council shall convene at the time and place designated by the *[acting chair]*

1 **chairperson** but within 30 days of the vacancy of the office of Public Records Advocate;

2 [(c)] (b) The council shall take up [only] the question of the [nomination of three qualified indi-
3 viduals for the Governor to consider for appointment under ORS 192.461 as] **process, selection and**
4 **appointment of a new** Public Records Advocate; and

5 [(d)] (c) The individual who had vacated the office of Public Records Advocate may participate
6 in deliberations and vote on the slate of nominees unless the individual vacated the office for rea-
7 sons described in ORS 192.461 (4).

8 [(4)] (5) The appointment of a member of the council described in subsection (2)(d) to (j) of this
9 section is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and
10 171.565.

11 [(5)] (6) A member of the council described in subsection (2)(d), (e) or (j) of this section is enti-
12 tled to compensation and expenses as provided in ORS 292.495.

13 [(6)] (7) The members of the council described in subsection (2)(d) to (L) of this section shall
14 each serve two-year terms and may be reappointed to successive terms.

15 [(7)] (8) A majority of the voting members of the council constitutes a quorum for the trans-
16 action of business.

17 [(8)] (9) The council shall meet at least once every six months. The council also may meet at
18 other times and places specified by the call of the [chair] **chairperson** or of a majority of the
19 members of the council.

20 [(9)] (10) All public bodies, as defined in ORS 192.311, shall assist the council in the performance
21 of its duties and, to the extent permitted by laws relating to confidentiality, furnish such informa-
22 tion, including public records, and advice as the members of the council consider necessary to per-
23 form their duties.

24 (11)(a) **The council may support or oppose legislation relating to public records law.**

25 (b) **The council may request that one or more legislators introduce legislation relating**
26 **to public records law.**

27 **SECTION 3.** ORS 192.483 is amended to read:

28 192.483. (1) The Public Records Advisory Council created under ORS 192.481 shall periodically
29 perform all of the following:

30 (a) Survey state agency and other public body practices and procedures for:

31 (A) Receiving public records requests, identifying the existence of records responsive to the re-
32 quests and gathering and disclosing responsive records;

33 (B) Determining fee estimates and imposing or waiving fees under ORS 192.324; and

34 (C) Determining and applying exemptions from required disclosure of public records.

35 (b) Examine practices similar to those described in paragraph (a) of this subsection in other ju-
36 risdictions.

37 (c) Identify inefficiencies and inconsistencies in application of the public records law that im-
38 pede transparency in public process and government.

39 (d) Make recommendations on changes in law, policy or practice that could enhance transpar-
40 ency in public process and government, and facilitate rapid dissemination of public records to re-
41 questers.

42 (e) Make recommendations on the role of the Public Records Advocate as facilitator in disputes
43 between custodians of public records and public record requesters.

44 (2) No later than December 1 of each even-numbered year, the council shall submit to the Gov-
45 ernor, and to the Legislative Assembly in the manner provided by ORS 192.245, a report that de-

1 scribes the findings of the council since the council's last report. The report may include
2 recommendations for legislation.

3 (3) The council or the Public Records Advocate may prepare reports and studies more frequently
4 than required under subsection (2) of this section.

5 (4) The council may adopt rules governing the operations of the office of the Public Records
6 Advocate, including but not limited to rules establishing procedures for the conduct of facilitated
7 dispute resolution under ORS 192.464. The council shall consider efficiencies and the preference for
8 a policy of transparency and openness in government in this state in adopting rules under this
9 subsection.

10 (5) **The Public Records Advocate shall serve as the custodian of all council records.**

11 **SECTION 4. (1) The Public Records Advocate Fund is established in the State Treasury,**
12 **separate and distinct from the General Fund. Interest earned by the Public Records Advoca-**
13 **cate Fund shall be credited to the Public Records Advocate Fund.**

14 (2) **The Public Records Advocate Fund shall consist of moneys appropriated or otherwise**
15 **transferred to the fund by the Legislative Assembly and interest earnings of the fund.**

16 (3) **Moneys in the Public Records Advocate Fund are continuously appropriated to the**
17 **Public Records Advocate for the purpose of funding the operations of the office of the Public**
18 **Records Advocate and the Public Records Advisory Council.**

19 **SECTION 5. Any actions taken by the Public Records Advisory Council before the effec-**
20 **tive date of this 2021 Act to recruit and appoint a Public Records Advocate are hereby rati-**
21 **fied and affirmed.**

22 **SECTION 6.** Section 3, chapter 107, Oregon Laws 2019, is amended to read:

23 **Sec. 3.** Notwithstanding [section 8 (6), chapter 728, Oregon Laws 2017] **ORS 192.481 (7):**

24 (1) The following members of the Public Records Advisory Council shall serve a three-year term
25 that commenced on January 1, 2018:

26 (a) The member appointed under [section 8 (2)(d), chapter 728, Oregon Laws 2017] **ORS 192.481**
27 **(2)(d).**

28 (b) One of the members appointed under [section 8 (2)(e), chapter 728, Oregon Laws 2017] **ORS**
29 **192.481 (2)(e).**

30 (c) The member appointed under [section 8 (2)(g), chapter 728, Oregon Laws 2017] **ORS 192.481**
31 **(2)(g).**

32 (d) The member appointed under [section 8 (2)(i), chapter 728, Oregon Laws 2017] **ORS 192.481**
33 **(2)(i).**

34 (e) The member appointed under [section 8 (2)(L), chapter 728, Oregon Laws 2017] **ORS 192.481**
35 **(2)(L).**

36 (2) The following members of the council shall serve a four-year term that commenced on Jan-
37 uary 1, 2018:

38 (a) One of the members appointed under [section 8 (2)(e), chapter 728, Oregon Laws 2017] **ORS**
39 **192.481 (2)(e).**

40 (b) The member appointed under [section 8 (2)(f), chapter 728, Oregon Laws 2017] **ORS 192.481**
41 **(2)(f).**

42 (c) The member appointed under [section 8 (2)(h), chapter 728, Oregon Laws 2017] **ORS 192.481**
43 **(2)(h).**

44 (d) The member appointed under [section 8 (2)(j), chapter 728, Oregon Laws 2017] **ORS 192.481**
45 **(2)(j).**

1 (e) The member appointed under [section 8 (2)(k), chapter 728, Oregon Laws 2017] **ORS 192.481**
2 **(2)(k)**.

3 **SECTION 7. This 2021 Act being necessary for the immediate preservation of the public**
4 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
5 **on its passage.**

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