

## Meeting Minutes

Oregon Public Records Advisory Council

October 1, 2019 1:00 pm

State Archives Building

800 Summer. St. NE

Salem, OR 97310

### **Members present:**

Ginger McCall (in person), Steve Suo (in person), Rob Bovett (in person), Scott Winkels (in person), Rich Vial (in person), Les Zaitz (on the phone), Mark Landauer (on the phone), Michael Kron (on the phone), Senator Thatcher (on the phone), Karin Power (on the phone), Tony Hernandez (on the phone)

### **Discussion of legislative proposal(s) to enshrine the independence of Advocate**

Conversation between Ginger, Senator Thatcher, and Rich Vial – Is there someone to support this bill? Thatcher - Senate side – committee bill that will allow for the introduction. Public comment from the governor to support it.

Ginger says now it's time to review proposals for legislation.

Rob Bovett says that we can't create a separation of power model that is in violation of the constitution. Council hires Advocate, Governor still appoints the council. We should create a model where the advocate stays on the council, but the chair rotates. Steve Suo asked about separation of powers issue – Rob Bovett says we can't make an advocate who is a completely independent actor. You don't want to carve out a piece of the executive branch that is not beholden to the governor. For cause and a term limit? Ginger says that it's a tough job with varying constraints to different stakeholders. Rob says that we're talking cap and trade in 2020. What is the political reality in the building? Karin Power - I wouldn't hesitate to move ahead especially if the senate side is able to sponsor the bill. Senator Thatcher says that as long as we aren't going too far, it shouldn't be an issue. What does the sentence about independence mean? How does it play out? Independent of all other government agencies? Not possible with the budgeting process here in this state. Services provided do not imply a reporting structure, and should be autonomous. Todd mentions that it can be independent and still be intertwined with other agencies. Perception matters.

Les Zaitz says we should be driven by ensuring independence of the advocate. The public has made that clear. Term limit and removal for cause should be seriously considered. Mark Landauer says that we want to be able to attract qualified individuals and provide a four year term. Ginger says that we can't do a national search unless we can ensure protection. Rob would like us to be more surgical and avoid political statements. Mark would echo Rob's sentiments. Scott says that his position has not changed. We should think long and hard about separating the office, fiscals will be put on them, I'm not convinced and can't see moving forward. There will not be a means to resolve fiscal impact statements if not

vetted through the Governor's Office. Agencies will only take a position on a bill if directed by the governor's office. Scott thinks it weakens the office. Lack of coordination means that the advocate should be free to propose legislation that is independent. Scott says he knows he's in the minority with his opposition. Steve proposes breaking down the concepts and addressing them originally. Michael says maybe we should reconsider who is appointing the council? Senate confirmation? Management and Labor Advisory Council – MLAC – workers compensation model. MLAC doesn't have any real power, they just vet. I think vetting makes perfect sense, says Scott Winkels. Changes to workers compensation laws are all vetted by MLAC. Advocate would be an executive director position, a non-voting member.

Concepts – independence? The public records advocate shall function separately vs the independent office of... Michael likes Ginger's draft which borrows from the long term care ombudsman. Should the council vote one by one? Are we taking a vote on the separate but independent language? Ginger would like to add language for independence because the Governor's office said they were unclear regarding the independence. Rob is concerned about the separation of power concerns and political pushback.

Rich Vial will move to add the word "independent" in front of the office. Second by Les. All in favor?

Steve – I, Rich – I, Scott – No, Rob – Abstain, Ginger – I, Les – I, Mark – Abstain, Michael – Abstain, Tony – I

Steve's four concepts – independence, should the PRAC appoint the Advocate?

Steve – Yes, Rob – Yes, Scott – Yes, Rich – Yes, Ginger – Yes, Les – Yes. Mark – Yes, Michael – Yes, Tony - Yes

Steve's concepts – shall the advocate be removable for cause and serve a four year term?

Steve – Yes, Rob – Yes, Scott – Yes, Rich – Yes, Ginger – Yes, Les – Yes, Mark – Yes, Michael – Yes, Tony – Yes

Steve's concepts – should the chair be someone other than the advocate? The council shall elect a chairperson and vice chairperson for such terms and duties as the council may require. Motion using Robert's rules of order. You adopt rules for the election and term.

Steve – Yes. Rob – Yes. Scott – Yes, Rich – Yes, Ginger – Yes, Les – Yes, Mark – Yes, Michael – Yes. Tony – Yes

Steve's concepts – should the advocate no longer get to vote? Ginger feels strongly that this should not go forward. The advocate should be removed from the vote if the vote is taking into account the topic of the advocate's removal for cause. It has to do with the public's confidence in the role that she should play.

Should the advocate be a voting member of the council?

Steve – Yes, Rob – Yes, Scott – No, Rich – Yes, Ginger – Yes, Les – Yes, Michael – Yes. Mark – Yes, Tony – Yes

Steve’s concepts – The council may support or oppose legislation relating to public records law. The council may request that one or more legislators introduce legislation relating to public records law.

Steve – Yes, Rob – Yes, Scott – No, Rich – Yes, Ginger – Yes, Les – absent, Mark – Yes, Michael – Yes, Tony - Yes

Ginger – because of the nature of the legislative concepts being kept from the public, it’s important that we can submit our own.

There are other changes, but the council has most closely agreed with a combination of Rob’s and Les’ proposals. Rob will mock up changes during the break.

Break.

The council reviews the legislative concept proposed by Rob. Michael moves.

Steve – I, Rob – I, Scott – No, Rich – Yes, Ginger – I, Les – Yes, Mark – Yes, Michael – Yes, Tony – Yes

Majority rules, we have language.

Vote on emergency clause language

Rob – I, Steve – I, Scott – Abstain, Rich – Yes, Ginger – I, Les – Yes, Mark – Yes, Michael – Sure, why not, Tony – Yes

Motion passes to include emergency clause

Council is recognizing the Deputy as the Acting Advocate

Next meeting is NOVEMBER 13<sup>th</sup> 1 PM

Kim Thatcher – legislative concept, what happens if there are amendments? Pull the plug if it’s not good? We need to ask Legislative Counsel whether or not we should add an operative clause. One line clause to the bill if LC said he had to.

Comment from the public – Brittany Ruiz has a suggestion that there should be a member of the public on the council. Tony chimes in that he is that member.

Move to adjourn.