

# D R A F T

## SUMMARY

Establishes Public Records Advocate as independent office. 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;  
3 amending ORS 192.461, 192.481 and 192.483 and section 3, chapter 107,  
4 Oregon Laws 2019; and declaring an emergency.

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

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

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

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

13 (3) The Public Records Advocate shall be a member in good standing of

1 the Oregon State Bar.

2 (4) The term of office of the Public Records Advocate shall be four years,  
3 except that the advocate may be removed for cause by the [*Governor or upon*  
4 *motion of the*] Public Records Advisory Council [*with the consent of the Gov-*  
5 *ernor*]. A determination to remove for cause may be appealed as a contested  
6 case proceeding under ORS chapter 183.

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

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

9 (7)(a) **The Public Records Advocate shall select and appoint a Dep-**  
10 **uty Public Records Advocate. The Deputy Public Records Advocate**  
11 **shall be a member in good standing of the Oregon State Bar.**

12 (b) **The Public Records Advocate may delegate to the Deputy Public**  
13 **Records Advocate any authority, power or duty to act possessed by the**  
14 **Public Records Advocate except the power to delegate set forth in this**  
15 **paragraph.**

16 (c) **If the position of the Public Records Advocate becomes vacant,**  
17 **the Deputy Public Records Advocate shall serve as the acting Public**  
18 **Records Advocate until a new Public Records Advocate has been ap-**  
19 **pointed.**

20 (8) The Public Records Advocate may hire one or more [*deputy advocates*  
21 *or*] other professional staff to assist in performing the duties assigned to the  
22 Public Records Advocate.

23 [(8)(a) *The State Archivist may furnish office facilities and provide ad-*  
24 *ministrative support to the Public Records Advocate.*]

25 [(b) *If the State Archivist declines to furnish office facilities and provide*  
26 *administrative support to the Public Records Advocate, the Oregon Department*  
27 *of Administrative Services shall furnish office facilities and provide adminis-*  
28 *trative support to the advocate.*]

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

30 192.481. (1) The Public Records Advisory Council is created.

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

- 1 (a) The Secretary of State or a designee of the Secretary of State;  
2 (b) The Attorney General or a designee of the Attorney General;  
3 (c) The Director of the Oregon Department of Administrative Services or  
4 a designee of the director;  
5 (d) A representative of the news media who is a member in good standing  
6 of a professional journalism association and who is appointed by the Gover-  
7 nor;  
8 (e) Two additional representatives of the news media who are appointed  
9 by the Governor;  
10 (f) A representative of the cities of this state who is appointed by the  
11 Governor;  
12 (g) A representative of the counties of this state who is appointed by the  
13 Governor;  
14 (h) A representative of the special districts of this state who is appointed  
15 by the Governor;  
16 (i) A representative of the public sector workforce who is appointed by  
17 the Governor;  
18 (j) A member of the public who is appointed by the Governor;  
19 (k) A Senator who is appointed by the President of the Senate and who  
20 serves as an ex officio nonvoting member;  
21 (L) A Representative who is appointed by the Speaker of the House of  
22 Representatives and who serves as an ex officio nonvoting member; and  
23 (m) *[Except as provided in subsection (3) of this section,]* The Public Re-  
24 cords Advocate[, *who shall serve as chair of the council*].  
25 **(3) The council shall elect a chairperson and a vice chairperson,**  
26 **who each shall serve in that capacity for a two-year term, or until**  
27 **their membership on the council ends, whichever is of shorter dura-**  
28 **tion. A chairperson or vice chairperson may be reelected to their po-**  
29 **sitions.**  
30 [(3)] (4) At any time when the office of Public Records Advocate is va-  
31 cant:

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

3       [(b)] (a) The council shall convene at the time and place designated by  
4 the [acting chair] **chairperson** but within 30 days of the vacancy of the of-  
5 fice of Public Records Advocate;

6       [(c)] (b) The council shall take up only the question of the [nomination  
7 of three qualified individuals for the Governor to consider for appointment  
8 under ORS 192.461 as] **selection and appointment of a new** Public Records  
9 Advocate; and

10       [(d)] (c) The individual who had vacated the office of Public Records  
11 Advocate may participate in deliberations and vote on the slate of nominees  
12 unless the individual vacated the office for reasons described in ORS 192.461  
13 (4).

14       [(4)] (5) The appointment of a member of the council described in sub-  
15 section (2)(d) to (j) of this section is subject to confirmation by the Senate  
16 in the manner prescribed in ORS 171.562 and 171.565.

17       [(5)] (6) A member of the council described in subsection (2)(d), (e) or (j)  
18 of this section is entitled to compensation and expenses as provided in ORS  
19 292.495.

20       [(6)] (7) The members of the council described in subsection (2)(d) to (L)  
21 of this section shall each serve two-year terms and may be reappointed to  
22 successive terms.

23       [(7)] (8) A majority of the voting members of the council constitutes a  
24 quorum for the transaction of business.

25       [(8)] (9) The council shall meet at least once every six months. The  
26 council also may meet at other times and places specified by the call of the  
27 [chair] **chairperson** or of a majority of the members of the council.

28       [(9)] (10) All public bodies, as defined in ORS 192.311, shall assist the  
29 council in the performance of its duties and, to the extent permitted by laws  
30 relating to confidentiality, furnish such information, including public re-  
31 cords, and advice as the members of the council consider necessary to per-

1 form their duties.

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

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

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

7 192.483. (1) The Public Records Advisory Council created under ORS  
8 192.481 shall periodically perform all of the following:

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

11 (A) Receiving public records requests, identifying the existence of records  
12 responsive to the requests and gathering and disclosing responsive records;

13 (B) Determining fee estimates and imposing or waiving fees under ORS  
14 192.324; and

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

17 (b) Examine practices similar to those described in paragraph (a) of this  
18 subsection in other jurisdictions.

19 (c) Identify inefficiencies and inconsistencies in application of the public  
20 records law that impede transparency in public process and government.

21 (d) Make recommendations on changes in law, policy or practice that  
22 could enhance transparency in public process and government, and facilitate  
23 rapid dissemination of public records to requesters.

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

27 (2) No later than December 1 of each even-numbered year, the council  
28 shall submit to the Governor, and to the Legislative Assembly in the manner  
29 provided by ORS 192.245, a report that describes the findings of the council  
30 since the council's last report. The report may include recommendations for  
31 legislation.

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

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

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

11 **SECTION 4. (1) The Public Records Advocate Fund is established in**  
12 **the State Treasury, separate and distinct from the General Fund.**

13 **(2) Moneys in the Public Records Advocate Fund are continuously**  
14 **appropriated to the Public Records Advocate for the purpose of fund-**  
15 **ing the operations of the office of the Public Records Advocate and the**  
16 **Public Records Advisory Council.**

17 **SECTION 5. Any actions taken by the Public Records Advisory**  
18 **Council before the effective date of this 2021 Act to recruit and appoint**  
19 **a Public Records Advocate are hereby ratified and affirmed.**

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

22 **Sec. 3.** Notwithstanding [*section 8 (6), chapter 728, Oregon Laws 2017*]

23 **ORS 192.481 (7):**

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

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

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

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

1 (d) The member appointed under section 8 (2)(i), chapter 728, Oregon Laws  
2 2017.

3 (e) The member appointed under section 8 (2)(L), chapter 728, Oregon  
4 Laws 2017.

5 (2) The following members of the council shall serve a four-year term that  
6 commenced on January 1, 2018:

7 (a) One of the members appointed under section 8 (2)(e), chapter 728,  
8 Oregon Laws 2017.

9 (b) The member appointed under section 8 (2)(f), chapter 728, Oregon Laws  
10 2017.

11 (c) The member appointed under section 8 (2)(h), chapter 728, Oregon  
12 Laws 2017.

13 (d) The member appointed under section 8 (2)(j), chapter 728, Oregon Laws  
14 2017.

15 (e) The member appointed under section 8 (2)(k), chapter 728, Oregon  
16 Laws 2017.

17 **SECTION 7. This 2021 Act being necessary for the immediate pres-**  
18 **ervation of the public peace, health and safety, an emergency is de-**  
19 **clared to exist, and this 2021 Act takes effect on its passage.**

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