

Oregon Sunshine Committee

Special Projects Subcommittee

February 16, 2022, 1:30pm – 3:30pm

DRAFT MINUTES

1. Review of pending legislation

The subcommittee conducted a general discussion of SB 1567, HB 4092 and SB 1576. There was noted concern that SB 1576 had language that the DEQ would not disclose confidential or proprietary information, but provide no clear definition of that that would be and no reference to a specific exemption under the public records. In regard to HB 4092, the proposed bill added another exemption to the PRR under ORS 192.355(45), which the subcommittee was not in favor of. The language of SB 1567 largely adopted exemptions for trade secrets existing within the PRR and there was not a large concern over this language.

By consensus, the subcommittee agreed that a statement from the subcommittee would be helpful regarding a strong desire to not add new exemptions to the PRR as proposed by HB 4092, and instead any new legislation that is proposing information be confidential should refer back to existing public records exemptions rather than create newer, more narrow definitions.

2. Discussion of recommendations

The subcommittee discussed a re-cap of the previous Sunshine Committee presentation regarding trade secrets. Members discussed the confusion of two different exemptions being applicable to trade secrets, with one being a conditional exemption and the other being non-conditional. The subcommittee questioned whether a conditional or non-conditional exemption was the better approach to address potential trade secret information requests. Mr. Fisher believed a conditional exemption was the better route, as it allowed the possibility of a public policy argument for the public's interest in the disclosure. Mr. Smith preferred non-conditional exemptions, as it was an easier decision for the local body to make when they have limited information available to them to make public interest decisions.

Overall, the subcommittee expressed a desire to see an improvement to this status quo. Suggestions included requiring individuals or entities submitting what it considered trade secrets to clearly mark the materials as such, and potentially include an attestation from that individual or entity outlining why such materials were considered trade secrets. It was believed that such information provided from the outset would streamline requests for that information, and seemed to be in line with the requirement that holders of a trade secret make reasonable efforts to protect that information and keep it a secret. The subcommittee also wished to harmonize the Uniform Trade Secrets Act with the exemptions within the PRR, allowing one path to clearly determine whether something was a protected trade secret and thus exempt from public disclosure or not.

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