

<p style="text-align: center;"><b>May 21, 2025</b>  <b>Location: WebEx</b>  <b>Sunshine Committee Members</b></p>
<p>Charlie Fisher, OSPIRG State Director / Co-chair  Morgan Smith, Polk County Counsel / Co-chair  Cameron Miles, Government Accountability Attorney, Governor's Office  Elliot Njus, Editor, The Oregonian  Cherrill Crosby, Executive Editor, Statesman Journal and Register Guard  Emily Cureton Cook, OPB Bend Bureau Chief  Cherrill Crosby, Executive Editor, Statesman Journal  Stephanie Clark, State Archivist  Leslie Wu, Policy Advisor to Oregon Attorney General  Alex Downing, City Recorder, City of Corvallis</p>
<p style="text-align: center;"><b>Guests</b></p>
<p>Daivd Pitcher, Public Records Counsel, Department of Justice  Erin Jansen, Deputy Legislative Counsel  Sam Dupree, Senior Assistant General Counsel, Oregon Judicial Department</p>
<p style="text-align: center;"><b>Agenda</b></p>
<p style="text-align: center;"><b>AUDIO STREAM 0:00:00-0.5</b></p>
<p><b><u>First Agenda Item: Introduction of New Members</u></b></p> <p>Members introduced themselves. New members include Leslie Wu, Oregon Attorney General Dan Rayfield's Policy Director, and Alex Downing, city recorder for the City of Corvallis, who is also a member of the Oregon Association of Municipal Recorders.</p>
<p><b><u>Second Agenda Item: Review/Approve Minutes</u></b></p> <p><b>Co-Chair Smith</b> moved to approve the minutes. <b>Ms. Clark</b> seconded. Motion passed unanimously 10-0.</p>
<p><b><u>Third Agenda Item – Nomination of Members for Special Projects Subcommittee</u></b></p> <p><b>Co-Chair Fisher</b> said that during the January meeting the group had talked about exemptions relating to judicial fitness and decided that they were going to send those to the special projects subcommittee to review, but they didn't have a full subcommittee due to some vacancies in the full committee. He opened the floor for people interested in joining the subcommittee.</p> <p><b>Co-Chair Smith</b> explained that the purpose of the subcommittee was to have more in-depth policy discussions, which could be unwieldy with the whole group. Current members are himself and Ms. Cureton-Cook.</p> <p><b>Ms. Wu</b> asked about the time commitment and scope of work.</p> <p><b>Co-Chair Smith</b> said it's a standing subcommittee that meets one to two times between committee meetings.</p> <p><b>Ms. Wu</b> said that she would volunteer with the caveat that she may not be able to attend all meetings potentially, due to child care.</p> <p><b>Ms. Downing</b> volunteered to serve as an alternate.</p> <p><b>Ms. Cureton-Cook</b> said she liked the idea of having alternates, especially given reporting deadlines.</p> <p><b>Mr. Njus</b> volunteered to serve as an alternate for the media representative.</p>

**Co-Chair Smith** moved to appoint three members, with Ms. Wu serving as the regular member and Mr. Njus and Ms. Downing as alternates.

**Ms. Downing** seconded the motion.

10-0 in favor; motion passed unanimously.

#### **Fourth Agenda Item – Update on Legislative Subcommittee and Senate Bill 890**

**Co-Chair Fisher** provided an update on the legislative subcommittee's work, as well as a bill related to the full committee, SB 890. At the January meeting, the full committee empowered the legislative subcommittee to make recommendations to the legislature on current bills being introduced. The legislative subcommittee met in February to review bills that had public records impact statements. House Bill 2069 is currently in Ways and Means. Several of the bills are not moving forward. Senate Bill 870 has passed.

Regarding Senate Bill 890, **Co-Chair Fisher** said Senator Thatcher introduced it on their behalf. He said it's a technical fix bill that changes the committee to which they report to the House and Senate Judiciary Committees; it changes the timing of their report, ahead of legislative days in even numbered years so that the relevant committees can potentially consider their recommendations; and it pushes out the sunset for the full committee so they can continue their work. It passed unanimously through the Senate and just last week passed unanimously in the House Judiciary Committee and will likely be taken up in the House soon.

**Co-Chair Smith** asked about 3628, which **Co-Chair Fisher** said is not moving forward.

#### **Fifth agenda item – Education Records Discussion**

**Co-Chair Fisher** opened discussion on the six exemptions related to education records.

**Co-Chair Smith** said there is not a lot for the committee to do on these exemptions. For a lot of them, they are more or less state law equivalents of exemptions already covered under federal law, specifically FERPA, the Family Educational Rights and Privacy Act. Regarding ORS 40.245, he saw that as an admissibility issue in civil litigation and didn't see much relationship to public records law.

**Mr. Miles** said that ORS 192.355(9) includes anything confidential or privileged, which is how we pull in attorney client privilege and would also pull this in as a privilege. He said this makes anything that goes along with this privilege exempt from disclosure with no balancing test.

**Co-Chair Smith** said that anything that's contained in 40-245 would also be covered by FERPA as an educational record and would still be confidential as far as release to the general public.

**Co-Chair Fisher** said that his take on this issue is that he tries to come up with a public interest reason why this should be made public or accessible, and he said it was hard to come up with a good reason why private communication from a student would need to be made public.

**Ms. Cureton-Cook** said that she tries to frame it as assuming things are public and whether there is a reason why they should be exempt or private. She said she couldn't see that this was much of an interest for journalists. She was curious about the issue raised by Mr. Miles in which this might establish a privilege between people when it's not an attorney. She also said

it was strange to have a provision regarding a disclosure that could damage or discriminate against the student or family and wondered how that assessment would be made.

**Mr. Miles** said a judge makes that call as to privilege in a court. He thought it would be a difficult fight to ask the legislature for any change to privileges. He said there are several different kinds of privileges.

**Co-Chair Smith** said the committee should stay within the scope of the public records piece.

**Ms. Cureton Cook** asked if privileges have public balancing tests. **Mr. Miles** said they do not since the judge made that call.

**Ms. Cureton-Cook** could see a scenario where a kid brings a gun to school and communication between the family and the school would be useful for accountability. But she said if this is a boulder that can't be rolled uphill, it sounded discouraging. She would suggest a balancing test.

**Co-Chair Fisher** said that in their recommendations they shouldn't consider the political reality or viability of what they are recommending, they should be making recommendations on what they think is ideal policy. He said generally he thought that the affairs of a student should be kept private, but perhaps the communications between the school staff and the parent about something that is very important and highlights structural problems could be useful, with a balancing test.

**Ms. Cureton-Cook** said that if this is establishing a privilege in a civil action, it seems like a redundant exemption.

**Co-Chair Smith** agreed that it was redundant, especially because of federal law.

**Co-Chair Fisher** suggested getting an opinion from DOJ on regarding this issue.

**Co-Chair Smith** said the bulk of these records are exempt from disclosure under federal law anyway, so there's not a lot at the state level that they could do.

**Ms. Cureton-Cook** said the goal of the committee was to advise against unneeded exemptions in the law. She suggested recommending that it not go forward, especially if it's protected in some other way.

**Mr. Pitcher** said he is not sure he could provide the AG's opinion on the issue, but he would be happy to do more research on the topic.

**Co-Chair Fisher** said he wanted to know to what extent information contained in these records also falls under federal law and would not be accessible.

Committee members discussed getting outside expertise from the General Counsel for Department of Education and other education-related stakeholders.

Committee members also brought up that they may have reviewed similar records related to university and K-12 personnel.

**Ms. Wu** and **Mr. Pitcher** said they would work together to invite some stakeholders and a DOJ attorney who represents the Department of Education to talk to them at the next meeting.

Committee members decided to review the rest of the exemptions at the next meeting, where they would also hear from special guests.

**Sixth Agenda Item – In Person Meeting Discussion**

**Chair Fisher** opened discussion on an annual in-person meeting, likely in Salem at the state capitol building. Committee members said they would like to hold it in September. **Mr. Njus** suggested, since he would not be at the July meeting, that the September in-person meeting be a longer session in which they tackle more issues. Committee members agreed that July would also be a planning meeting for September agenda items.

Adjournment

DRAFT