

<DateSubmitted>

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB2287

By: Pfeiffer of the House and McCortney of the Senate

Title: Open records; Public Access Counselor; Attorney General; review of denial; public bodies; effective date; emergency.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

SENATE CONFEREES

McCortney _____

Paxton _____

Floyd _____

Daniels _____

Howard _____

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2287

By: Pfeiffer of the House

and

McCortney of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to open records; creating the Public Access Counselor within the Office of the Attorney General; allowing certain persons to file review of denial of open records requests with the Public Access Counselor; providing instructions for filing; prohibiting filings made for a commercial purpose; establishing procedures for review of requests; directing the Attorney General to examine request and response and issue certain notifications; providing procedures for certain suits by requester; permitting the Attorney General to issue advisory opinions; permitting Public Access Counselor to deny certain requests; directing that the Attorney General shall not be required to produce certain records; clarifying that Attorney General is not limited in enforcing the Oklahoma Open Records Act; amending 74 O.S. 2021, Section 18b, as amended by Section 1, Chapter 296, O.S.L. 2022 (74 O.S. Supp. 2023, Section 18b), which relates to duties of the Attorney General; directing the Attorney General to investigate and prosecute violations related to the Oklahoma Open Records Act and the Oklahoma Open Meeting Act or defer matter to district attorney; providing for codification; and declaring an emergency.

1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 24A.40 of Title 51, unless there
4 is created a duplication in numbering, reads as follows:

5 A. There is hereby established in the Office of the Attorney
6 General the Public Access Counselor Unit.

7 B. A person whose request to inspect or copy a public record is
8 denied by a public body, except the Legislature and committees,
9 commissions, and agencies thereof, may file a request for review
10 with the Public Access Counselor not later than thirty (30) calendar
11 days after the date of the denial. The request for review shall be
12 in writing on a form, prescribed by the Attorney General, and signed
13 by the requester, and shall include:

- 14 1. A copy of the request for access to records; and
- 15 2. Any responses from the public body.

16 C. A person whose request to inspect or copy a public record
17 was treated by the public body as a request for a commercial purpose
18 may file a request for review with the Public Access Counselor for
19 the limited purpose of reviewing whether the public body properly
20 determined that the request was made for a commercial purpose.

21 D. A person whose request to inspect or copy a public record
22 has not been returned in a prompt or reasonable manner may file a
23 request for review with the Public Access Counselor.

24

1 E. No person whose request to inspect or copy a public record
2 is made for a commercial purpose may file a request for review with
3 the Public Access Counselor.

4 F. Upon receipt of a request for review, the Public Access
5 Counselor shall determine whether further action is warranted. If
6 the Public Access Counselor determines that the alleged violation is
7 unfounded, they shall advise the requester and the public body and
8 no further action shall be undertaken. In all other cases, the
9 Public Access Counselor shall forward a copy of the request for
10 review to the public body within seven (7) business days after
11 receipt and shall specify the records or other documents that the
12 public body shall furnish to facilitate the review. To the extent
13 that records or documents produced by a public body contain
14 information claimed to be confidential or exempt from disclosure
15 under the Oklahoma Open Records Act, the Public Access Counselor
16 shall not disclose that information.

17 G. 1. The Attorney General shall examine the request and
18 response and shall issue to the public body or head of the public
19 body, or both, an advisement in response to the request for review
20 within sixty (60) calendar days after its receipt. Additionally,
21 the Attorney General shall notify the requester when the Office of
22 the Attorney General has completed its review.

23 2. Upon receipt of an advisement, the public body shall either
24 take necessary action promptly and reasonably to comply with the

1 Oklahoma Open Records Act or shall respond to the requester. If the
2 advisement concludes that no additional response is required, the
3 requester may still file suit in the proper district court against
4 the public body of which the request was made.

5 3. A public body that discloses records in accordance with
6 advice of the Attorney General is immune from all liabilities by
7 reason thereof and shall not be liable for penalties under this act.

8 H. If the requester files suit under Section 24A.17 of Title 51
9 of the Oklahoma Statutes with respect to the same denial that is the
10 subject of a pending request for review, the requester shall notify
11 the Public Access Counselor, and the Public Access Counselor shall
12 take no further action with respect to the request for review and
13 shall so notify the public body.

14 I. The Attorney General may issue advisory opinions to advise
15 public bodies regarding compliance with this act. A review may be
16 initiated upon receipt of a written request from the head of the
17 public body or its attorney, which shall contain sufficient accurate
18 facts from which a determination can be made. The Public Access
19 Counselor may request additional information from the public body in
20 order to assist in the review. A public body that relies in good
21 faith on the advice of the Attorney General in responding to a
22 request is not liable for penalties under this act if the facts upon
23 which the advice is based have been fully and fairly disclosed to
24 the Public Access Counselor.

1 J. If the Public Access Counselor finds that a person
2 requesting review of an agency's action pursuant to subsection B, C,
3 or D of this section has submitted multiple frivolous requests, the
4 Public Access Counselor may deny future requests for review.

5 K. Notwithstanding any other provisions of law, the Attorney
6 General shall not be required to produce, pursuant to Section 24A.5
7 of Title 51 of the Oklahoma Statutes, the following:

8 1. Any records provided under this section to the Office of the
9 Attorney General by another public body;

10 2. Any correspondence between the Office of the Attorney
11 General and the public body related to advice under this section; or

12 3. Any work papers or product of the Office of the Attorney
13 General in carrying out the duties required by this section.

14 L. Nothing in this section shall be construed to limit the
15 Attorney General from enforcing or taking action regarding the
16 Oklahoma Open Records Act.

17 SECTION 2. AMENDATORY 74 O.S. 2021, Section 18b, as
18 amended by Section 1, Chapter 296, O.S.L. 2022 (74 O.S. Supp. 2023,
19 Section 18b), is amended to read as follows:

20 Section 18b. A. The duties of the Attorney General as the
21 chief law officer of the state shall be:

22 1. To appear for the state and prosecute and defend all actions
23 and proceedings, civil or criminal, in the Supreme Court and Court
24 of Criminal Appeals in which the state is interested as a party;

1 2. To appear for the state and prosecute and defend all actions
2 and proceedings in any of the federal courts in which the state is
3 interested as a party;

4 3. To initiate or appear in any action in which the interests
5 of the state or the people of the state are at issue, or to appear
6 at the request of the Governor, the Legislature, or either branch
7 thereof, and prosecute and defend in any court or before any
8 commission, board or officers any cause or proceeding, civil or
9 criminal, in which the state may be a party or interested; and when
10 so appearing in any such cause or proceeding, the Attorney General
11 may, if the Attorney General deems it advisable and to the best
12 interest of the state, take and assume control of the prosecution or
13 defense of the state's interest therein;

14 4. To consult with and advise district attorneys, when
15 requested by them, in all matters pertaining to the duties of their
16 offices, when the district attorneys shall furnish the Attorney
17 General with a written opinion supported by citation of authorities
18 upon the matter submitted;

19 5. To give an opinion in writing upon all questions of law
20 submitted to the Attorney General by the Legislature or either
21 branch thereof, or by any state officer, board, commission or
22 department; 7 provided, that the Attorney General shall not furnish
23 opinions to any but district attorneys, the Legislature or either
24 branch thereof, or any other state official, board, commission or

1 department, and to them only upon matters in which they are
2 officially interested;

3 6. At the request of the Governor, State Auditor and Inspector,
4 State Treasurer, or either branch of the Legislature, to prosecute
5 any official bond or any contract in which the state is interested,
6 upon a breach thereof, and to prosecute or defend for the state all
7 actions, civil or criminal, relating to any matter connected with
8 either of their Departments;

9 7. Whenever requested by any state officer, board or
10 commission, to prepare proper drafts for contracts, forms and other
11 writing which may be wanted for the use of the state;

12 8. To prepare drafts of bills and resolutions for individual
13 members of the Legislature upon their written request stating the
14 gist of the bill or resolution desired;

15 9. To enforce the proper application of monies appropriated by
16 the Legislature and to prosecute breaches of trust in the
17 administration of such funds;

18 10. To institute actions to recover state monies illegally
19 expended, to recover state property and to prevent the illegal use
20 of any state property, upon the request of the Governor or the
21 Legislature;

22 11. To pay into the State Treasury, immediately upon its
23 receipt, all monies received by the Attorney General belonging to
24 the state;

1 12. To settle, compromise and dispose of an action in which the
2 Attorney General represents the interests of the state, so long as
3 the consideration negotiated for such settlement, compromise or
4 disposition is payable to the state or one of its agencies which is
5 a named party of the action and any monies, any property or other
6 item of value is paid first to the State Treasury;

7 13. To keep and file copies of all opinions, contracts, forms
8 and letters of the ~~office~~ Office of the Attorney General, and to
9 keep an index of all opinions, contracts and forms according to
10 subject and section of the law construed or applied;

11 14. To keep a register or docket of all actions, demands and
12 investigations prosecuted, defended or conducted by the Attorney
13 General in behalf of the state. The register or docket shall give
14 the style of the case or investigation, where pending, court number,
15 office number, the gist of the matter, result and the names of the
16 assistants who handled the matter;

17 15. To keep a complete office file of all cases and
18 investigations handled by the Attorney General on behalf of the
19 state;

20 16. To report to the Legislature or either branch thereof
21 whenever requested upon any business relating to the duties of the
22 ~~Attorney General's office~~ Office of the Attorney General;

23 17. To institute civil actions against members of any state
24 board or commission for failure of such members to perform their

1 duties as prescribed by the statutes and the Constitution and to
2 prosecute members of any state board or commission for violation of
3 the criminal laws of this state where such violations have occurred
4 in connection with the performance of such members' official duties;

5 18. To respond to any request for an opinion of the ~~Attorney~~
6 ~~General's office~~ Office of the Attorney General, submitted by a
7 member of the Legislature, regardless of subject matter, by written
8 opinion determinative of the law regarding such subject matter;

9 19. To convene multicounty grand juries in such manner and for
10 such purposes as provided by law; provided, such grand juries are
11 composed of citizens from each of the counties on a pro rata basis
12 by county;

13 20. To investigate any report by the State Auditor and
14 Inspector filed with the Attorney General pursuant to Section 223 of
15 this title and prosecute all actions, civil or criminal, relating to
16 such reports or any irregularities or derelictions in the management
17 of public funds or property which are violations of the laws of this
18 state;

19 21. To represent and protect the collective interests of all
20 utility consumers of this state in rate-related proceedings before
21 the Corporation Commission or in any other state or federal judicial
22 or administrative proceeding;

23 22. To represent and protect the collective interests of
24 insurance consumers of this state in rate-related proceedings before

1 the Insurance Commissioner or in any other state or federal judicial
2 or administrative proceeding;

3 23. To investigate and prosecute any criminal action relating
4 to insurance fraud, if in the opinion of the Attorney General a
5 criminal prosecution is warranted, or to refer such matters to the
6 appropriate district attorney;

7 24. To monitor and evaluate any action by the federal
8 government including, but not limited to, executive orders by the
9 President of the United States, rules or regulations promulgated by
10 an agency of the federal government or acts of Congress to determine
11 if such actions are in violation of the Tenth Amendment to the
12 Constitution of the United States; ~~and~~

13 25. To maintain data related to human trafficking and to assist
14 law enforcement, social service agencies, and victim services
15 programs in identifying and supporting victims of human trafficking;
16 and

17 26. To investigate and prosecute any civil or criminal action
18 relating to violations of the Oklahoma Open Records Act, Section
19 24A.1 et seq. of Title 51 of the Oklahoma Statutes, if the Attorney
20 General determines that a civil or criminal prosecution is warranted
21 or to defer such matters to a district attorney.

22 B. Nothing in this section shall be construed as requiring the
23 Attorney General to appear and defend or prosecute in any court any
24 cause or proceeding for or on behalf of the Oklahoma Tax Commission,

1 the Board of Managers of the State Insurance Fund, or the
2 Commissioners of the Land Office.

3 C. In all appeals from the Corporation Commission to the
4 Supreme Court of Oklahoma in which the state is a party, the
5 Attorney General shall have the right to designate counsel of the
6 Corporation Commission as the Attorney General's legally appointed
7 representative in such appeals, and it shall be the duty of the
8 Corporation Commission counsel to act when so designated and to
9 consult and advise with the Attorney General regarding such appeals
10 prior to taking action therein.

11 SECTION 3. It being immediately necessary for the preservation
12 of the public peace, health or safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

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