

SENATE BILL NO. 40

INTRODUCED BY G. HERTZ

BY REQUEST OF THE SENATE SELECT COMMITTEE ON JUDICIAL OVERSIGHT AND REFORM

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PUBLIC RECORD LAWS RELATING TO THE SUPREME COURT; REQUIRING THE RECORDING OF A CLOSED JUDICIAL DELIBERATION MEETING; PROVIDING FOR THE DISCLOSURE OF JUDICIAL DELIBERATIONS AND CASE INFORMATION AFTER A CASE IS FINAL; AMENDING SECTIONS 2-3-203, 2-3-212, AND 2-6-1002, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, THE RIGHT TO KNOW CLAUSE FOUND IN ARTICLE II, SECTION 9, OF THE MONTANA CONSTITUTION FORMS THE BASIS OF THIS BILL, AND ARTICLE II, SECTION 9, OF THE MONTANA CONSTITUTION DOES NOT CONTAIN A JUDICIAL EXCEPTION; AND

WHEREAS, THE MONTANA CONSTITUTION'S GRANT OF THE GENERAL "LEGISLATIVE POWER" TO THE MONTANA STATE LEGISLATURE IS SUBJECT TO THE PEOPLE'S RIGHTS OF INITIATIVE AND REFERENDUM. IT IS CLEAR THAT PART OF THE LEGISLATIVE POWER IS THE AUTHORITY TO ADOPT LAWS PROTECTING THE INDIVIDUAL RIGHTS LISTED IN THE MONTANA CONSTITUTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-3-203, MCA, is amended to read:

"2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) The presiding officer of any meeting may close the meeting during the time the discussion

1 relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands
2 of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived
3 by the individual about whom the discussion pertains and, in that event, the meeting must be open.

4 (4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to
5 be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating
6 position of the public agency.

7 (b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only
8 parties are public bodies or associations described in subsections (1) and (2).

9 (5) (a) The Subject to subsections (5)(b) and (5)(c), the supreme court may close a meeting that
10 involves judicial deliberations in an adversarial proceeding.

11 (b) All closed meetings of the supreme court must be recorded by electronic means with the
12 recording constituting the official record of the meeting. A written record of the meeting must also be made and
13 must include the information specified in 2-3-212(2) and (3), including all documents considered by the
14 supreme court.

15 (c) The electronic recording and written record provided for in subsection (5)(b) must be available
16 for inspection by the public after the case that was subject to closed judicial deliberations becomes final. The
17 supreme court may redact confidential information when the demands of individual privacy of a party or witness
18 clearly exceed the merits of public disclosure.

19 (6) Any committee or subcommittee appointed by a public body or an association described in
20 subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to
21 the requirements of this section.

22 (7) A case becomes final after the time to appeal FOR ANY FURTHER REVIEW OF the supreme court's
23 order to the United States supreme court has expired. If an appeal is pursued, a case becomes final when all
24 the issues on appeal are settled and no other issues can be appealed to any other court. If the supreme court
25 remands a case in whole or in part to a lower court, the case becomes final when all the issues on appeal are
26 settled and no other issues can be appealed to any other court. OR THE TIME FOR ANY FURTHER REVIEW BY ANY
27 OTHER COURT WITH SUBJECT-MATTER JURISDICTION OVER THE CASE HAS EXPIRED. IF ANOTHER COURT UNDERTAKES
28 REVIEW OF THE CASE, IT BECOMES FINAL WHEN ALL THE ISSUES REVIEWED ARE SETTLED AND NO OTHER ISSUES CAN BE

1 REVIEWED FURTHER IN ANY OTHER COURT."

2
3 **Section 2.** Section 2-3-212, MCA, is amended to read:

4 **"2-3-212. Minutes of meetings -- public inspection.** (1) Appropriate minutes of all meetings
5 required by 2-3-203 to be open must be kept and must be available for inspection by the public. If an audio
6 recording of a meeting is made and designated as official, the recording constitutes the official record of the
7 meeting. If an official recording is made, a written record of the meeting must also be made and must include
8 the information specified in subsection (2).

9 (2) Minutes must include without limitation:

10 (a) the date, time, and place of the meeting;

11 (b) a list of the individual members of the public body, agency, or organization who were in
12 attendance;

13 (c) the substance of all matters proposed, discussed, or decided; and

14 (d) at the request of any member, a record of votes by individual members for any votes taken.

15 (3) If the minutes are recorded and designated as the official record, a log or time stamp for each
16 main agenda item is required for the purpose of providing assistance to the public in accessing that portion of
17 the meeting.

18 (4) Any time a presiding officer closes a public meeting pursuant to 2-3-203, the presiding officer
19 shall ensure that minutes taken in compliance with subsection (2) are kept of the closed portion of the meeting.
20 ~~The-Except as provided in 2-3-203(5)(c), the~~ minutes from the closed portion of the meeting may not be made
21 available for inspection except pursuant to a court order."

22
23 **Section 3.** Section 2-6-1002, MCA, is amended to read:

24 **"2-6-1002. Definitions.** As used in this chapter, the following definitions apply:

25 (1) "Confidential information" means information that is accorded confidential status or is prohibited
26 from disclosure as provided by applicable law. The term includes information that is:

27 (a) constitutionally protected from disclosure because an individual privacy interest clearly exceeds
28 the merits of public disclosure;

- 1 (b) related to judicial deliberations in adversarial proceedings of any court other than the supreme
2 court;
- 3 (c) necessary to maintain the security and integrity of secure facilities or information systems
4 owned by or serving the state; and
- 5 (d) designated as confidential by statute or through judicial decisions, findings, or orders; and OR
6 (e) related to judicial deliberations in adversarial proceedings of the supreme court until the case at
7 issue becomes final as provided in 2-3-203(7).
- 8 (2) "Constitutional officer" means the governor, lieutenant governor, attorney general, secretary of
9 state, superintendent of public instruction, or auditor, who are the constitutionally designated and elected
10 officials of the executive branch of government.
- 11 (3) "Constitutional officer record" means a public record prepared, owned, used, or retained by a
12 constitutional officer.
- 13 (4) "Essential record" means a public record immediately necessary to:
14 (a) respond to an emergency or disaster;
15 (b) begin recovery or reestablishment of operations during and after an emergency or disaster;
16 (c) protect the health, safety, and property of Montana citizens; or
17 (d) protect the assets, obligations, rights, history, and resources of a public agency, its employees
18 and customers, and Montana citizens.
- 19 (5) "Executive branch agency" means a department, board, commission, office, bureau, or other
20 public authority of the executive branch of state government.
- 21 (6) "Historic record" means a public record found by the state archivist to have permanent
22 administrative or historic value to the state.
- 23 (7) "Local government" means a city, town, county, consolidated city-county, special district, or
24 school district or a subdivision of one of these entities.
- 25 (8) "Local government records committee" means the committee provided for in 2-6-1201.
- 26 (9) "Permanent record" means a public record designated for long-term or permanent retention.
- 27 (10) "Public agency" means the executive, legislative, and judicial branches of Montana state
28 government, a political subdivision of the state, a local government, and any agency, department, board,

commission, office, bureau, division, or other public authority of the executive, legislative, or judicial branch of the state of Montana.

(11) "Public information" means information prepared, owned, used, or retained by any public agency relating to the transaction of official business, regardless of form, except for confidential information that must be protected against public disclosure under applicable law. The term includes information prepared, owned, or retained by the supreme court, regardless of form, relating to an adversarial proceeding after the case at issue becomes final as provided in 2-3-203(7).

(12) "Public officer" means any person who has been elected or appointed as an officer of state or local government.

(13) (a) "Public record" means public information that is:

(a)(i) fixed in any medium and is retrievable in usable form for future reference; and
(b)(ii) designated for retention by the state records committee, judicial branch, legislative branch, or local government records committee.

(b) The term includes judicial deliberations of the supreme court pursuant to 2-3-203(5).

(14) "Records manager" means an individual designated by a public agency to be responsible for coordinating the efficient and effective management of the agency's public records and information.

(15) "State records committee" means the state records committee provided for in 2-6-1107."

NEW SECTION. Section 4. Effective date. [This act] is effective October 1, 2025.

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